

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case No. 14-1297-EL-SSO
Authority to Provide for :
a Standard Service Offer :
Pursuant to R.C. 4928.143 :
in the Form of an Electric:
Security Plan. :

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PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:00 a.m. on
Monday, October 26, 2015.

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VOLUME XXXII

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Monday Morning Session,
October 26, 2015.

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EXAMINER ADDISON: Let's go on the record. The Public Utilities Commission of Ohio has set for hearing at this time and place Case No. 14-1297-EL-SSO, being In The Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. Code 4928.143 in the Form of an Electric Security Plan.

My name is Meghan Addison, and with me is Mandy Chiles, and we are the attorney examiners assigned by the Commission to hear this case.

Let's go ahead and take abbreviated appearance this morning starting with the companies.

MR. BURK: On behalf of the companies, your Honor, James W. Burk, Carrie M. Dunn, also on behalf of the companies David A. Kutik, the Jones Day law firm, James Lang and Trevor Alexander of the Calfee Halter law firm.

MS. GRADY: Thank you, your Honors. On behalf of the Ohio Consumers's Counsel, Maureen R. Willis.

1 MR. KURTZ: Good morning, your Honor.
2 For OEG, Mike Kurtz.

3 MR. McNAMEE: On behalf the staff of the
4 Public Utilities Commission, Thomas McNamee.

5 MR. OLIKER: Good morning, your Honor.
6 On behalf IGS Energy, Joe Oliker.

7 MR. SOULES: Good morning, your Honors.
8 On behalf of the Sierra Club Michael Soules, and with
9 me is Shannon Fisk

10 MS. FLEISHER: Good morning, your Honors.
11 On behalf of the Environmental Law & Policy Center,
12 Madeline Fleisher.

13 MS. BOJKO: Good morning, your Honor. On
14 behalf of the Ohio Manufacturers' Association Energy
15 Group, Kim Bojko.

16 MR. SETTINERI: Good morning, your
17 Honors. On behalf of the Retail Energy Supply
18 Association, PJM Power Providers Group, Electric
19 Power Supply Association, Constellation NewEnergy,
20 and Exelon Generation, M. Howard Petricoff, Michael
21 Settineri and Gretchen Petrucci.

22 MR. HAYS: On behalf of NOAC and the
23 individual communities, Tom Hays.

24 MR. RANDAZZO: Good morning, your Honors.
25 On behalf of the Industrial Energy Users of Ohio,

1 Samuel C. Randazzo.

2 EXAMINER ADDISON: Thank you, all.

3 Let's go ahead and start with our first
4 rebuttal witness of today.

5 Mr. Lang.

6 MR. LANG: Thank you, your Honor. The
7 companies call Donald Moul for rebuttal testimony.

8 EXAMINER ADDISON: Mr. Moul, would you
9 please raise your right hand.

10 (Witness sworn.)

11 EXAMINER ADDISON: Thank you.

12 Please proceed, Mr. Lang.

13 MR. LANG: Thank you.

14 And at this time we would like marked
15 the rebuttal testimony of Donald Moul, public
16 version, as Company Exhibit 141, and also his
17 rebuttal testimony, confidential version, marked as
18 Company Exhibit 142C.

19 EXAMINER ADDISON: So marked.

20 (EXHIBITS MARKED FOR IDENTIFICATION.)

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DONALD MOUL

being first duly sworn, as prescribed by law, was examined and testified on rebuttal as follows:

DIRECT EXAMINATION

By Mr. Lang:

Q. Mr. Moul, do you have in front of you Company Exhibit 141 and 142C?

A. Yes, I do.

Q. And can you identify Company Exhibit 141?

A. Company Exhibit 141 is the rebuttal testimony -- my rebuttal testimony in the public version.

Q. And can you identify Company Exhibit 142C.

A. Company Exhibit 142C is my confidential version of rebuttal testimony.

Q. Do you have any corrections or additions to make to Company Exhibits 141 or 142C?

A. No, I do not.

Q. If I were to ask you the questions set forth in companies' Exhibits 141 and 142C, would you provide the answer as set forth therein?

A. Yes, I would.

MR. LANG: Your Honor, Mr. Moul is available for cross.

1 EXAMINER ADDISON: Thank you very much.

2 Mr. Hays, do you have any questions?

3 MS. GRADY: I'm sorry, your Honor. Would
4 you entertain right now a motion to strike?

5 EXAMINER ADDISON: Certainly, Ms. Willis.

6 MS. WILLIS: Thank you. Your Honor, OCC
7 would move to strike -- there's two pieces of the
8 companies. The first excerpt is on page 2 beginning
9 on line 15 with the sentence that begins "Over the
10 past 3 years, FES has retired a total of 27 units at
11 12 different plants." My motion to strike would go
12 through the end of the 23, the third bullet.

13 That's the first motion to strike, and
14 the grounds for striking that, your Honor, this is
15 cumulative evidence. This evidence was originally
16 set forth and in, perhaps, not as much detail, but it
17 was addressed in Mr. Moul's direct testimony at page
18 4. He indicated there that FES had been forced to
19 retire and deactivate units. It's the same
20 information. This is a little bit more detailed.

21 In addition to it being cumulative
22 evidence, it is evidence that really is not proper
23 rebuttal. Proper rebuttal testimony addresses new
24 evidence that was intervenor adduced during the
25 course of the cross. This is not new evidence. It

1 was addressed in the direct testimony, which further
2 indicates that it really is in the nature of direct
3 testimony and it is not proper rebuttal.

4 The second motion to strike goes to the
5 sentence beginning on page 7, the last sentence on
6 line 18, where it begins, "There is at least
7 22,653 megawatts," through the end of that sentence,
8 which is on page 8, along with footnote 11.

9 And the motion to strike there is
10 grounded on the fact that the witness is relying upon
11 hearsay evidence. He's attached DMR-1, information
12 related to -- the information pulled off PJM's
13 website, and so, actually, the DMR-1, the schedule
14 also would be subject to the motion to strike. I
15 don't believe it is acceptable hearsay and so we
16 believe it should be stricken.

17 EXAMINER ADDISON: Mr. Lang.

18 MR. LANG: Yes, your Honor. With regard
19 to the first motion on page 2, the first point with
20 regard to the testimony being cumulative, I would
21 agree with Ms. Willis that there is additional
22 information provided here, which she correctly stated
23 he did provide a very high level description of plant
24 retirements in his direct testimony. This provides
25 more detail.

1 And to the second point of it not being
2 proper rebuttal, it is rebuttal to Dr. Kalt's
3 statement with regard to plants having avoidable
4 costs and being -- whether willing buyers are
5 available for plants that are in the PJM market,
6 whether a willing buyer is available for plants that
7 may be in the situation of being prematurely retired.

8 And so this is Mr. Moul's discussion and
9 response to Dr. Kalt's discussion in his testimony
10 saying that, I guess at least in Dr. Kalt's view, it
11 is fairly certain that all of these plants -- not all
12 of these plants that, Sammis and Davis-Besse plants,
13 if they were at risk of retirement, would be sold to
14 a purchaser because of their financial situation.

15 So Mr. Moul is responding to that point
16 in Dr. Kalt's testimony and giving examples of other
17 plants that have not been sold, and so that is proper
18 rebuttal.

19 EXAMINER ADDISON: Would you like to
20 speak to the second motion to strike as well?

21 MR. LANG: Sure. On page 7, I believe,
22 really goes to the information provided in the
23 attachment. The information provided in the
24 attachment comes from a couple of different sources.
25 One is 10-K's annual reports of the companies at

1 issue filed -- they are filed with the SEC.

2 The practice traditionally at the
3 Commission has been to accept them as public records
4 and, therefore, not hearsay. They are certainly
5 reliable. It's the statements of those companies as
6 to their plant ownership and the megawatts hours of
7 those units or plants, and then that was
8 cross-referenced against PJM data, and, in
9 particular, PJM and their 2018-19 resource model as a
10 spreadsheet of the installed capacity of all of these
11 units.

12 That is PJM information. Again, it's a
13 public record. It's a part of PJM's annual auction
14 and, again, the practice of this Commission has been
15 to rely on the PJM records available on the PJM
16 website and to count them as an exception to hearsay.
17 So the combination of the PJM source and the SEC
18 annual report source is what makes up the information
19 in Attachment DMR-1. It fits within a couple of
20 different exceptions to hearsay and, therefore,--
21 neither the attachment nor the sentence on page 7
22 going over to page 8 should be stricken.

23 MS. WILLIS: Your Honor, may I quickly
24 add a response?

25 EXAMINER ADDISON: You may.

1 MS. WILLIS: With respect to DMR-1, I
2 would note that we look at the source of the
3 information on Buckeye Power, Ohio Dominion Electric
4 Cooperative, American Municipal Power, the sources
5 are listed as websites and media kits. I don't think
6 that is the type of materials and information that
7 is -- that we can rely on as a reliable and accurate
8 source of information, unlike perhaps on like a 10-K.
9 I find some real trouble in relying upon a media kit.

10 EXAMINER ADDISON: Mr. Lang, would you
11 like to respond to that?

12 MR. LANG: And, again, your Honor, you'll
13 see that's the one section of the plants that are
14 municipally owned or owned by cooperatives, one of
15 the sources is those company websites, but it's also
16 cross-referenced and confirmed.

17 Again, as you see the footnote
18 underneath, based on the PJM 2018-2019 RPM resource
19 model that provides that information and the
20 megawatts for those plants.

21 EXAMINER ADDISON: Would anyone else like
22 to weigh in on these pending motions to strike?

23 MR. KURTZ: Yes, I would.

24 EXAMINER ADDISON: Go ahead, Mr. Kurtz.
25 I would say that the question on any evidence matter

1 is really the probative value versus prejudice to a
2 party. This type of information and this attachment,
3 the number of cost-of-service units that participate
4 in the PJM auctions is exactly what the Commission
5 should and needs to know when making a decision here.
6 It goes to the legality of the transaction. It's the
7 New Jersey and the Maryland cases. It's a direct
8 rebuttal to the market monitor. It's very important
9 evidence. The number of power plants FES has retired
10 in other states, Pennsylvania and Ohio, again, is
11 very relevant. I am sure the Commission, the
12 Commissioners, would want to know that information.
13 It's very important, and it's not prejudicial, so I
14 think it should definitely stay in.

15 MS. WILLIS: With response to Mr. Kurtz's
16 comments, it's already in the record. The
17 information on the retirements of FES plants and
18 deactivations, it's in the record. It's been in the
19 record. It's probably in the record more than once,
20 probably about three or four different times.

21 MR. OLIKER: Your Honor, I would join the
22 first motion on cumulative evidence. It has already
23 been included in their direct case. It's not
24 appropriate to file very broad rebuttal testimony
25 that could have been presented in the first instance.

1 EXAMINER ADDISON: Anyone else?

2 MS. BOJKO: Your Honor, OMAEG supports
3 the motion regarding cumulative evidence, and I would
4 also note that many times throughout this hearing
5 parties have argued that other states and other
6 information is pertinent and relevant, and those
7 items have been excluded from the evidence presented
8 today so.

9 EXAMINER ADDISON: Thank you, all.

10 Ms. Fleisher, did you have something to
11 add?

12 MS. FLEISHER: Just to add on the
13 cumulative evidence point, just the prejudicial point
14 of evidence, the Ohio Supreme Court has ruled in
15 Phung versus Waste Management, 71 Ohio St.3d 408,
16 410, that the parties' right to present rebuttal
17 testimony does -- only applies where that evidence
18 "should not be brought in rebuttal party's case in
19 chief," which I think just underlines the points
20 already made, that they clearly got into this topic
21 on their case -- in their case in chief, had the
22 chance to present all of this detail in that -- at
23 that point, and rebuttal is not an appropriate way to
24 do that.

25 EXAMINER ADDISON: Mr. Lang, final word?

1 MR. LANG: With regard to the, I guess --
2 I guess the cumulative objection about being
3 cumulative, I have nothing further to add.

4 To the extent that there is an issue with
5 regard to the attachment and the hearsay, one
6 additional thought would be to take administrative
7 notice of the information available on the PJM
8 website which Mr. Moul has relied upon and that would
9 eliminate the hearsay issue. I don't believe there
10 is because it is a PJM record, but that would be one
11 way to address it.

12 Thank you, your Honor.

13 MR. KURTZ: Can I say one last thing,
14 your Honor?

15 EXAMINER ADDISON: Very quickly,
16 Mr. Kurtz.

17 MR. KURTZ: The hearsay rule has very --
18 I know it has been a big issue here, but that's
19 intended to protect lay jurors from being tricked by
20 smart lawyers. No one is going to trick you. No one
21 is going to trick the Commissioners who are advised
22 by lawyers and accountants and economists, and so the
23 purpose of this phase of the case and the purpose of
24 giving the Commissioners the evidence they need to
25 make a very important decision I think clearly

1 outweighs any technical Rules of Evidence which don't
2 even apply here anyway.

3 EXAMINER ADDISON: Thank you.

4 At this time we will deny both motions to
5 strike. We feel that the information on page 2 is
6 being presented to directly rebut the comments
7 presented during intervenor testimony.

8 As to it being cumulative, this presents
9 more information towards the allegations that FES
10 wouldn't be able to obtain any offers in the event
11 that they would decide to retire these plants, so we
12 feel that this is appropriate rebuttal testimony.

13 As to the second motion to strike on page
14 7, after quick review of the record in this case, we
15 have admitted several documents from the PJM website
16 and feel that this is also an appropriate use of
17 rebuttal testimony at this point.

18 Thank you.

19 Are there any additional motions to
20 strike at this time?

21 MS. FLEISHER: Your Honor, one follow-up
22 request for the companies on that ruling, which as
23 far as I can tell, the attachment doesn't provide a
24 URL reference for the PJM website, so if they could
25 specify where from the website that information

1 comes.

2 EXAMINER ADDISON: Doesn't it provide
3 such an address on page 8 at the bottom in footnote
4 1?

5 MS. FLEISHER: I guess in DRM-1 it lists
6 as an "Additional Source PJM 2018/19 RPM Resource
7 Model." I don't believe those are the same
8 documents, but if they are, I am happy to be
9 corrected.

10 MR. OLIKER: Your Honor, if I may, I just
11 clicked on the link, and I didn't see that table.
12 Maybe the company could clarify if that's to a
13 different document.

14 MR. LANG: Your Honor, in the footnote,
15 footnote 11 on page 8, is to a different document on
16 the PJM website. If the parties are interested, we
17 can certainly provide a link to the excel file, which
18 is the '18-'19 listing of ICAP, which I believe
19 Mr. Oliker has actually had the same document, but I
20 believe an earlier year already taken administrative
21 notice of by the attorney examiners. But we can
22 provide that link to the parties if --

23 MS. FLEISHER: That would be appreciated.

24 MR. LANG: If they think that's helpful.

25 MR. OLIKER: Jim, I'm sorry. Where does

1 it say "Source Dominion 10-K"? Is that in the ICAP
2 as well? I am just trying to follow this. I am
3 looking at DRM-1, and why does it say source,
4 "Dominion 10-K," for example? I understand we can
5 get the megawatt number from the PJM website. But I
6 am just trying to figure out how PJM has presented
7 this information.

8 MR. LANG: And, your Honors, I believe
9 you made a ruling. I'm not the witness to testify,
10 certainly, to questions about the exhibit. Maybe we
11 can move forward with Mr. Moul.

12 EXAMINER ADDISON: I agree. Any further
13 questions can be directed towards Mr. Moul.

14 MR. OLIKER: Thank you.

15 EXAMINER ADDISON: Is there anything else
16 before we begin cross-examination?

17 Thank you.

18 MS. BOJKO: Your Honors, I guess I would
19 request any parties supporting the stipulation or not
20 opposing the stipulation be asked to ask questions
21 first, as we have been doing in the direct case.

22 EXAMINER ADDISON: Certainly.

23 MS. BOJKO: Thank you.

24 EXAMINER ADDISON: Mr. Kurtz?

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Well, actually, will you turn to the Exhibit DMR-1. Okay. You have the total muni and co-ops 4,915 megawatts.

A. Yes.

Q. Is that right? Okay. Did you look at the East Kentucky Power Cooperative, who is also a member of PJM that's not listed here?

A. If -- we did not include East Kentucky Power Co-op as part of that, although I believe they are an FRR entity.

Q. I think they are an RPM. They have about 3,000 megawatts of generation.

MR. OLIKER: Objection.

Q. Do you know if that's true?

EXAMINER ADDISON: Mr. Kurtz, there is a pending objection.

MS. WILLIS: Objection.

MR. OLIKER: If I can, it appears Mr. Kurtz is trying to further supplement Mr. Moul's testimony through friendly cross, and I don't think it's appropriate in this proceeding.

MR. SOULES: Your Honor, we would agree, yes.

1 EXAMINER ADDISON: Mr. Kurtz, response?

2 MR. KURTZ: I just wanted to make sure
3 the document is as accurate as possible, the nature
4 of the question. I can rephrase if you would like.

5 EXAMINER ADDISON: I am not sure if
6 rephrasing that particular question is going to help.
7 I am going to sustain the objection. I am sure if
8 there is any information missing, the other parties
9 will raise that during their cross-examination.

10 MR. KURTZ: Thank you. No more
11 questions.

12 EXAMINER ADDISON: Thank you, Mr. Kurtz.
13 Mr. Hays, do you have any questions?

14 MR. HAYS: I believe other parties have
15 agreed to go first.

16 EXAMINER ADDISON: Oh, certainly.

17 MR. HAYS: If that's all right.

18 EXAMINER ADDISON: Mr. Soules?

19 Thank you.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Soules:

23 Q. Thank you, your Honor.

24 Good morning, Mr. Moul. My name is
25 Michael Soules, and I represent Sierra Club in this

1 proceeding. How are you today?

2 A. Fine, thank you.

3 Q. Before talking about some of the specific
4 issues addressed in your rebuttal testimony, I wanted
5 to cover just a few preliminary matters. And, first,
6 if you could turn to page 1 of your rebuttal
7 testimony.

8 A. Okay.

9 Q. Looking at lines 14 and 15, you reference
10 the Davis-Besse plant and the W.H. Sammis plant,
11 which you collectively referred to as capital "P,"
12 the "Plants." Do you see that reference?

13 A. Yes.

14 Q. And throughout your testimony you have a
15 number of references to the "Plants" with plants
16 being capitalized, correct?

17 A. That's correct.

18 Q. And are each of those references
19 referring specifically to only Davis-Besse and the
20 Sammis units?

21 A. Yes.

22 Q. Okay. So it's not referring to the OVEC
23 entitlement.

24 A. That's correct.

25 Q. Great. Thank you. And except for the

1 OVEC fuel cost reference on page 5, line 6, your
2 testimony does not discuss the OVEC plants; is that a
3 fair statement?

4 A. That's correct.

5 Q. Thank you. The rebuttal testimony that
6 you've filed responds to the testimony of several
7 different intervenor witnesses, correct?

8 A. Yes.

9 Q. And one of the witnesses you respond to
10 is Tyler Comings, correct?

11 A. That's correct.

12 Q. And your rebuttal testimony discusses
13 both the direct and the supplemental testimony that
14 Mr. Comings filed, correct?

15 A. Yes.

16 Q. And did you personally draft your
17 rebuttal testimony?

18 A. Yes.

19 Q. Okay. You drafted the entire testimony?

20 A. I drafted the testimony, and I directed
21 the attachment to be developed.

22 Q. Okay. Thank you. And when did you begin
23 drafting your rebuttal testimony?

24 A. Shortly after my original testimony. I
25 think that was around September 13, so shortly

1 thereafter.

2 Q. September 13 of this year?

3 A. Yeah.

4 Q. Okay. Thank you.

5 A. It would have been following the
6 testimony of the intervening witnesses that are
7 addressed here.

8 Q. Okay. Thank you. And how much time did
9 you spend reviewing Mr. Comings' direct testimony?

10 A. I don't remember.

11 Q. Do you have a ballpark sense?

12 A. At least an hour and a half.

13 Q. Do you know how much time you spent
14 reviewing Mr. Comings' supplemental testimony?

15 A. Similar amount of time.

16 Q. Okay. Thank you. If we could look at
17 page 2 of your rebuttal testimony.

18 A. Okay.

19 Q. On lines 9 through 10, there is a
20 reference to "the same short-term uncertainty that
21 FES faces with the Plants." Do you see that
22 reference?

23 A. Yes, I do.

24 Q. And how long of a period are you talking
25 about when you refer to the short-term in this

1 portion of your testimony?

2 A. When I am referring to short-term, I am
3 typically in less than a five-year timeframe.

4 Q. Less than a five-year timeframe?

5 A. Yes.

6 Q. So it's your opinion that the plants face
7 uncertainty over the next approximately five years;
8 is that correct?

9 A. It's my opinion that particularly
10 uncertainty around energy market prices in the near
11 term are one of the major challenges for these
12 plants, yes.

13 Q. Thank you. So staying in this portion of
14 your testimony, on lines 10 through 11, there is a
15 statement that "If a purchaser does not know if the
16 Plants will be recovering the avoidable costs, FES
17 cannot expect to get proper value for the Plants."
18 Do you see that statement in your testimony?

19 A. Yes, I do.

20 Q. Is it your belief that the Sammis plant
21 is capable of recovering its avoidable costs over the
22 next five years?

23 A. Well, as I mentioned, there is
24 uncertainty over the next five years. That could be
25 on the negative side or the positive side, so there

1 is a chance that it could recover its avoidable
2 costs.

3 Q. But you think there is also a possibility
4 that Sammis plant could not recover its avoidable
5 costs; is that correct?

6 A. Yes, with respect to not recovering its
7 avoidable costs, so the scenario that runs out in my
8 mind is you have a certain amount of capital
9 investment to maintain a reliable level of
10 performance of the plants. If energy market values
11 are more negative than -- than projected right now,
12 that can challenge the revenue you have to put back
13 into the plants. It starts to erode on the
14 reliability of the plants. They run less. They get
15 less energy revenue. Less energy revenue feeds less
16 revenue back into reinvesting in their reliability.

17 And you can get into this downward spiral
18 of performance where eventually you are not covering
19 your avoidable costs and you have to make a
20 retirement decision.

21 Q. Do you think it's possible that the
22 Sammis plant's variable operating costs might be
23 higher than the energy revenue it would receive over
24 the next five years?

25 A. I think that's kind of the scenario I

1 just laid out, is there is a -- potentially you could
2 go down that path. I don't expect the variable
3 operating costs to change significantly over the next
4 five years. You know, the majority of that is fuel.
5 Almost 80 percent of their variable costs are fuel,
6 and we know with -- that's probably for the
7 confidential session.

8 But those are relatively well known and
9 relatively stable right now, so I don't expect a real
10 big change in costs, so the real uncertainty is on
11 the revenues and whether they will cover those
12 variable costs.

13 Q. Staying on page 2, starting on line 14,
14 you state that "FES is all too familiar with the
15 circumstances in which a plant is prematurely retired
16 instead of being sold." Do you see that reference in
17 your testimony?

18 A. Yes, I do.

19 Q. Okay. And then following that you
20 reference 27 different FES units, correct?

21 A. That's correct.

22 Q. And am I correct that all 27 units are
23 coal-fired units?

24 A. That is correct.

25 Q. Okay. And is it your testimony that all

1 27 units were prematurely retired?

2 A. Yes.

3 Q. Is it your understanding that each of
4 these 27 units were capable of recovering their
5 avoidable costs?

6 THE WITNESS: Could you rephrase or could
7 I have that read back again, the question?

8 (Record read.)

9 A. So it's my understanding, based on
10 information from the folks that work with me at FES,
11 for the plants in 2012, but also for the plants
12 following that, that given capital investments that
13 were required to maintain their compliance with
14 Mercury Air Toxic Standards, and overlaying that with
15 low energy market revenues and the balance sheet
16 situation of FirstEnergy Solutions led to a situation
17 where they would not cover their avoidable costs and,
18 therefore, were retired.

19 Q. So the retirement of some of these units
20 was prompted, in part, by the Mercury Air Toxic
21 Standards; is that correct?

22 A. Yes.

23 Q. Do you know which units were retired, in
24 part, due to the MATS rule?

25 A. It's my understanding that all of them

1 were.

2 Q. How would you distinguish between a unit
3 that is retired prematurely as opposed to a unit that
4 is retired at the appropriate time?

5 A. How would you define the appropriate
6 time? I am trying to understand your question.

7 Q. Yeah, yeah. So the prematurely suggests
8 that something was retired too early, correct?

9 A. The way I think about it is
10 operationally, right? So these plants could continue
11 to have investments and could continue to operate for
12 much longer than they did. However, as I said, given
13 the capital expenditure that was required for
14 environmental compliance on top of the balance sheet
15 at FirstEnergy Solutions and the low energy market
16 revenues, as well as at that time, too, capacity
17 market revenues, all of that factored into those
18 decisions to retire.

19 So if it has operational life and you
20 have to retire it sooner than that and it's still got
21 competitive variable costs to dispatch in the market,
22 I would say that's a premature retirement.

23 MR. SOULES: Your Honor, could I have the
24 last answer read back?

25 EXAMINER ADDISON: You may.

1 (Record read.)

2 MR. SOULES: Thank you. Thank you, your
3 Honor.

4 Q. (By Mr. Soules) So, Mr. Moul, if a unit
5 still has operational life and its variable operating
6 costs are competitive, it would be premature to
7 retire that unit; is that your testimony?

8 A. On top of that you would have to have
9 some capital expenditure that would question your
10 ability to cover your costs going forward, so if you
11 put that on top of the hypothetical, then that's the
12 condition that I outlined in my answer.

13 Q. Several of the 27 units discussed on page
14 2 of your rebuttal testimony were purchased as part
15 of the FE Corp.'s merger with Allegheny Energy; is
16 that correct?

17 A. Yes, that's correct.

18 Q. And that merger occurred in February of
19 2011; is that correct?

20 A. I believe that's correct. Subject to
21 check, I think that's the right date.

22 Q. And the units that were purchased from
23 Allegheny Energy included Hatfields Ferry Units 1
24 through 3, Mitchell Units 1 and 2, and the Armstrong
25 plant; is that correct?

1 A. Yes.

2 Q. Were any of the other 27 units purchased
3 as part of that merger?

4 A. Yes. You also had Albright, Rivesville,
5 RP Smith, Willow Island.

6 Q. Okay. Thank you. And staying on page 2
7 of your rebuttal testimony, line 24 states, "When FES
8 announced these retirement decisions, it did not get
9 any reasonable offers." Do you see that statement?

10 A. Yes, I do.

11 Q. Did FES try to sell any of these units
12 prior to announcing their retirement?

13 A. I was not aware of any marketing effort
14 prior to the decision to retire.

15 Q. Okay. Thank you. Did FES try to sell
16 any of these units after announcing their retirement?

17 A. Again, in my responsibility at
18 FirstEnergy Solutions, I wouldn't be part of a
19 marketing of the units for sale, so I was unaware of
20 any marketing efforts afterwards.

21 MR. OLIKER: Could I have that question
22 and answer read back again.

23 EXAMINER ADDISON: You may.

24 (Record read.)

25 MR. OLIKER: Okay. Thank you.

1 Q. (By Mr. Soules) So, Mr. Moul, you don't
2 know whether FES tried to sell any of these units
3 after the retirements were announced; is that
4 correct?

5 A. I don't know of marketing efforts to sell
6 them. I do know we received offers.

7 Q. Thank you. Could you please turn to page
8 3 of your rebuttal testimony.

9 A. Okay.

10 Q. So on page 3, lines 6 through 17, you are
11 rebutting Dr. Kalt's testimony that Sammis and
12 Davis-Besse are less efficient producers; is that
13 correct?

14 A. Yes, I believe.

15 Q. Okay. Is it your understanding that
16 Dr. Kalt is referring specifically to the plants'
17 variable operating costs when he described Sammis and
18 Davis-Besse as inefficient?

19 A. That's my understanding, and that's how I
20 approached rebutting the testimony, as talking about
21 their variable costs and how they dispatch.

22 Q. Okay. In addition to discussing the
23 variable operating costs for Sammis and Davis-Besse,
24 you also cite to Judah Rose's energy price for the
25 ATSI zone, correct?

1 A. Yeah. Although that's in the
2 confidential section of my testimony, but, yes.

3 Q. Yes. And I will not inquire, and please
4 don't mention any of the specific numbers.

5 A. That was probably more for me than for
6 you so I remember I am not in the confidential
7 section of my testimony right now.

8 Q. Thank you, Mr. Moul. Let's talk about
9 the Sammis plant specifically. Due to the difference
10 between the projected variable operating costs and
11 Mr. Rose's projected energy forecast, it's your
12 opinion that Sammis will economically dispatch low in
13 the supply stack during the term of the proposed
14 transaction; is that correct?

15 A. Yes, that's true. Also it's true that I
16 base it on knowing where Sammis is dispatching in the
17 supply stack right now compared to other units in
18 PJM.

19 Q. You don't have any firsthand knowledge
20 about the variable operating costs of non-FES units
21 that dispatch in PJM, correct?

22 A. No, that's not correct. I don't know
23 unit by unit, but I do know what the supply stack
24 looks like. In fact, for a presentation at an
25 American Nuclear Society conference I had the supply

1 stack for June of this past summer pulled, so I know
2 essentially asset type, where they are typically
3 dispatching based on market conditions that were in
4 that month, and it doesn't vary a whole lot.

5 Q. And it's your expectation that the Sammis
6 units will dispatch frequently during the term of the
7 proposed transaction, correct?

8 A. I think that will -- that will be based
9 on what the energy prices are, and if the projections
10 hold true, then, yes, they will dispatch similar to
11 the way they have been dispatching currently and in
12 the past years.

13 Q. Do you know what the capacity factor of
14 the Sammis units has been thus far in 2015?

15 A. I don't know the capacity factor off the
16 top of my head. I do know it's equivalent forced
17 outage rate at EFOR has not been optimal. It has not
18 been where we expected it. It's around 17 percent
19 right now. We are in an outage window with the
20 Sammis units, and we're doing some of those capital
21 investments that I talked to you about to try to
22 bring that EFOR level back down to where we expect it
23 to be, somewhere -- somewhere below 10 percent and
24 getting closer to the projections.

25 And, as I said, when market revenues are

1 there, you can spend more money to get it a little
2 better than that, but right now that's the level we
3 can afford to spend.

4 Q. The 17 percent figure that you just
5 mentioned, was that for each of the Sammis units or
6 is that a collective number?

7 A. That's collective year-to-date Sammis
8 Units 1 through 7.

9 Q. Do you know what the EFOR is for the
10 specific units?

11 A. I don't know that off the top of my head.

12 Q. Outside of the forced outages that are
13 reflected in the EFOR figure, do you know how
14 frequently the Sammis units are dispatching thus far
15 in 2015?

16 A. Yeah. I would say that when they are --
17 when they are avoidable, they are being dispatched
18 into the marketplace on a regular basis. They cycle
19 with energy prices in the off-peak hours. They will
20 go down at low power levels when prices are low to
21 limit losses, and then when prices are high in the
22 on-peak hour, they will be up near their full
23 capacity.

24 Q. Okay. Thank you. And when PJM is
25 deciding whether to dispatch a generating unit, it

1 typically considers hourly market energy price,
2 correct?

3 A. When you are dispatching a unit, PJM does
4 look at it on an hourly basis. However, we look at
5 our units on -- like Sammis, for example, we will
6 look at Sammis on an integrated basis, right? So we
7 are not trying to cycle a plant up or down for a
8 one-hour blip in energy prices. We look at it
9 integrated over three- or seven-day periods.

10 Obviously, when we know we have sustained
11 low prices, we will reduce load to minimize any
12 losses we might have during those low-price periods,
13 and then we will be back up at full load when the
14 pricing signals comes from PJM. But what we've
15 typically seen is we'll must-run them at a minimum of
16 two feed pumps forward, low level of power, and then
17 the economic dispatch will take them up to full load
18 when the prices dictate.

19 Q. And PJM decides when the Sammis units get
20 taken up to full load, correct?

21 A. They send a price signal, and they have
22 a -- they send you a dispatch signal, and you follow
23 the dispatch signal based on the capability you've
24 given them in the day-ahead marketplace.

25 Q. Okay. So you agree with me that PJM

1 makes the call as to whether to dispatch a full load?

2 A. No, I won't agree with you on that
3 because you could make a choice to say, I am going to
4 must-run this unit at full load. It's really the
5 plant owner's decision as to what to do with the
6 dispatch of their units, so it's an economic
7 evaluation by the plant owner and who is offering
8 those units into the market for dispatch.

9 Q. But if a unit is being offered for
10 economic dispatch, then PJM would make the call; is
11 that correct?

12 A. Yeah. You would follow the dispatch
13 signals. If it was economically dispatched, you
14 would follow the dispatch signals of PJM, that's
15 correct.

16 Q. If a unit is being offered as must-run in
17 PJM, it's being offered at its minimum load, not its
18 maximum load, correct?

19 A. It depends where you offer it. It's up
20 to the owner of the plant as to where to must-run the
21 unit at.

22 Q. How does FES typically offer the Sammis
23 units as must-run when it offers them as must-run
24 into PJM?

25 A. Well, when FES is making the dispatch

1 decisions --

2 MR. LANG: And, your Honors, if I could
3 interrupt, if I could just ask the witness if we're
4 getting into an area of confidential details how FES
5 operates the plants.

6 THE WITNESS: That's a great point.

7 A. I mean, let me put it to you this way. I
8 couldn't speculate as to how the companies will do
9 it, and maybe we can save how FES does it for the
10 confidential section if that's okay.

11 Q. Yes, absolutely. Yeah.

12 MR. LANG: Thank you, your Honor.

13 MR. SOULES: Thank you, Mr. Lang.

14 Q. (By Mr. Soules) Without inquiring into
15 the numbers, the forecasted energy prices that you
16 provide on lines 1 to 13 on page 3, those are annual
17 averages, correct?

18 A. Annual around-the-clock averages from
19 Mr. Rose's testimony.

20 Q. Okay. So that means if Mr. Rose's energy
21 price forecasts were accurate, hourly energy prices
22 within ATSI would often be lower than the figures
23 reported on lines 12 to 13, correct?

24 A. Well, so like any average, they would be
25 lower and higher at any given hour, and that would be

1 the average around-the-clock value for it.

2 Q. Okay. In actual practice the Sammis
3 units will not necessarily dispatch just because
4 their variable operating costs are below the market
5 energy price, correct?

6 THE WITNESS: Could you read that
7 question back again.

8 (Record read.)

9 A. There are a lot of factors that can go
10 into a dispatch decision. In a general sense, if
11 your variable costs are below the energy projection
12 or the energy price, the LMP, then you will be
13 dispatched. There may be times when energy prices go
14 below your variable costs then you may cycle down in
15 power, and there will be times when energy prices are
16 above your costs by a great deal that you'll be
17 collecting that additional revenue, so. But the
18 dispatch decision comes down to the plant owner.

19 Q. If there were another unit that had a
20 lower variable operating cost than one of the Sammis
21 units, PJM would send -- would likely send a dispatch
22 signal to that other unit, correct?

23 A. That's possible. There are instances
24 when, for reliability reasons, PJM may choose to run
25 a different unit out of merit, and it may have

1 something that's higher cost dispatched before
2 something that's lower cost, but that's -- that's
3 kind of a one-off situation.

4 Q. So generally that's true.

5 A. That's generally true, yes.

6 Q. Okay. Thank you. Could you please turn
7 to page 4 of your rebuttal testimony.

8 A. Okay.

9 Q. So starting on line 3 at page 4 and
10 running through page 4, line 8, you provide testimony
11 about the costs at Sammis and Davis-Besse, correct?

12 A. That's correct.

13 Q. And this testimony is rebutting testimony
14 that was submitted by Tyler Comings, correct?

15 A. Yes, that's correct.

16 Q. And it's your understanding Mr. Comings
17 testified FES underestimated the projected costs of
18 both Sammis and Davis-Besse, correct?

19 A. That's my understanding.

20 Q. Okay. And on page 4, lines 16 through
21 19, you provide cost information about Davis-Besse
22 specifically, correct?

23 A. Yes.

24 Q. Do you have a copy of Mr. Comings'
25 testimony with you?

1 A. No, I don't.

2 MR. SOULES: Your Honor, just one moment.
3 Your Honor, may we approach?

4 EXAMINER ADDISON: You may.

5 Q. Mr. Moul, I just handed you the
6 confidential versions of the direct and supplemental
7 testimony of Tyler Comings; is that correct?

8 A. That's correct.

9 Q. And could you please identify the
10 portions of Mr. Comings' testimony where he
11 underestimated the cost of Davis-Besse?

12 A. So the majority of the challenge on the
13 costs is associated with the coal units, but there
14 are also general sections in here talking about the
15 value of the proposed transaction, so as part of the
16 rebuttal testimony, I rolled Davis-Besse's costs in
17 there for completeness.

18 Q. But Mr. Comings never specifically
19 testified FES underestimated the costs of
20 Davis-Besse, correct?

21 A. That's correct.

22 Q. Could you we take a look at page 4 lines
23 6 through 7.

24 A. Yes.

25 Q. It's your opinion that environmental

1 regulations will not have a material effect on the
2 future costs of Sammis; is that correct?

3 A. Yes.

4 Q. And you are relying on the testimony of
5 Paul Harden and Raymond Evans for that opinion; is
6 that correct?

7 A. I am actually relying upon discussion
8 with Ray Evans who works in our environmental
9 department who is our lead for environmental matters.

10 Q. Okay. So you are relying specifically on
11 conversations you had with Mr. Evans; is that
12 correct?

13 A. Yes. Understanding what the regulations
14 are and what the impacts to Sammis would be.

15 Q. On page 4, line 19 through page 5, line
16 5, you provide testimony about the Sammis plant's
17 current average costs for medium sulfur Northern
18 Appalachian coal; is that correct?

19 A. That's correct.

20 Q. Does the Sammis plant exclusively burn
21 median sulfur Northern Appalachian coal?

22 A. Actually, it burns mostly high sulfur
23 Northern Appalachian coal, which is less expensive.
24 The medium sulfur is the higher priced of the two.

25 Q. Does the Sammis plant burn any Powder

1 River Basin coal?

2 A. Very little, but it does.

3 Q. Is it your understanding that Mr. Comings
4 criticized the companies' projection of coal costs at
5 Sammis?

6 A. I really focused on providing all the
7 information associated with a cost at Sammis itself,
8 so any time there are criticisms of the projections
9 of costs, coal is such a large portion of it, that's
10 why I specifically wanted to address it in my
11 rebuttal testimony.

12 Q. But Mr. Comings did not specifically
13 testify about the cost of coal at Sammis, correct?

14 A. I don't remember.

15 Q. Could you please take a look at page 6
16 of your rebuttal testimony.

17 A. Okay.

18 Q. On lines 1 through 11, you offer several
19 opinions about the amending of the term sheet that
20 was negotiated between FES and the companies; is that
21 correct?

22 A. Yes.

23 Q. And that's the term sheet that's been
24 admitted in this case as Sierra Club Exhibit 1; is
25 that correct?

1 A. Yes, that's correct.

2 Q. And to date the companies and FES have
3 not actually drafted the power purchase agreement for
4 the proposed transaction, correct?

5 MR. LANG: Objection, your Honor.

6 EXAMINER ADDISON: Grounds?

7 MR. LANG: Beyond the scope of the
8 rebuttal, and these are questions that were actually
9 asked and answered several times on the first round
10 of testimony in this hearing.

11 MR. SOULES: Your Honor, first of all, I
12 was asking about as of today, not as of a month and a
13 half ago. And, secondarily, Mr. Moul is providing
14 rebuttal testimony about the proposed transaction and
15 I think it's fair to ask questions about what has and
16 hasn't been agreed to by the companies and FES with
17 respect to that.

18 EXAMINER ADDISON: Mr. Lang.

19 MR. LANG: And, your Honor, the rebuttal
20 testimony is on Section 19 and 20 of the term sheet,
21 as Mr. Soules has noted. That's part of the record
22 already in this case. To the extent that he has
23 questions about Section 19 and 20, then that would be
24 within the scope of Mr. Moul's testimony.

25 Talking about what may or may not have

1 been done outside of Section 19 or 20 would be beyond
2 the scope of his rebuttal testimony.

3 MS. BOJKO: Your Honor, may I be heard?

4 EXAMINER ADDISON: You may, Ms. Bojko.

5 MS. BOJKO: Actually, he also talks about
6 section 10 on page 6 of his rebuttal testimony, and
7 he also makes some pretty broad-sweeping statements
8 about what Sections 10, 20, and 19 do or do not do,
9 and I think that exploring how he is interpreting
10 those provisions and how he puts those in his
11 testimony with the broad statements that some of us
12 may believe to be inaccurate and testing those
13 statements is definitely fair game. He put it in his
14 rebuttal testimony.

15 And how the term sheet has changed, if it
16 is true rebuttal, he may be suggesting that it's
17 changed or not changed, and we have a right to
18 explore that.

19 MR. SOULES: Your Honor, just very
20 briefly, the question that Mr. Moul was responding to
21 inquires about what happens if FES terminates the
22 proposed transaction. The question does not relate
23 to the term sheet specifically.

24 MS. WILLIS: And, your Honor, if I may be
25 heard.

1 EXAMINER ADDISON: Yes, very brief.

2 MS. WILLIS: Very brief reply, 611(B)
3 states that all relevant matters and matters
4 affecting credibility, so it's a wide-open cross
5 rule, and to the extent that they are trying to limit
6 it to the scope of the testimony prepared, that's
7 inappropriate under the Ohio Rules of Evidence.

8 MR. LANG: And, your Honor, that has
9 absolutely never been the practice before this
10 Commission, and Ms. Willis knows that. For rebuttal
11 testimony, in particular, the cross is limited to the
12 rebuttal. That's the point of the rebuttal, is
13 responding to specific issues and then being
14 cross-examined on those specific issues. That's why
15 we are here today.

16 And I would note that with regard to
17 Ms. Bojko's statement in terms of exploring
18 Mr. Moul's testimony and his reading of those
19 sections of the term sheet, the question that was
20 posed that I objected to does not fall within that
21 question of investigating his understanding of those
22 sections of the term sheet. That's why I objected to
23 it.

24 EXAMINER ADDISON: We are going to allow
25 the question. The witness can answer if he knows.

1 THE WITNESS: Could you read the question
2 back, again.

3 EXAMINER ADDISON: Yes, please. Thank
4 you.

5 (Record read.)

6 A. It's my understanding that the draft
7 sheet -- the term sheet is the final term sheet and
8 there has been no additional work done on any
9 additional purchase power agreement language.

10 Q. Thank you.

11 MR. SOULES: Thank you, your Honor.

12 Q. Mr. Moul, do you have a copy of the term
13 sheet with you on the stand?

14 A. No, I do not.

15 MR. SOULES: Your Honor, may I approach?

16 EXAMINER ADDISON: You may.

17 Q. Mr. Moul, you have been handed a document
18 that has previously been admitted in this case as
19 Sierra Club Exhibit 1. Do you recognize this
20 document?

21 A. Yes, I do.

22 Q. And is this document the term sheet
23 that's discussed on page 6 of your rebuttal
24 testimony?

25 A. Yes, it is.

1 Q. So going back to your rebuttal testimony,
2 page 6, on lines 9 through 11, you state that "Under
3 Section 19, FES would be responsible to pay the
4 Companies the difference between contract payments
5 and the amount of revenue that the Companies would
6 have received for the output of the Plants."

7 Did I read that statement correctly?

8 A. Yes, that's correct.

9 Q. So in this portion of your testimony you
10 are providing an opinion about Section 19 of the term
11 sheet, correct?

12 A. Yes, that's correct.

13 Q. And Section 19 does not actually state
14 that FES will be responsible to pay the companies the
15 difference between contract payments and the amount
16 of revenue that the companies would have received for
17 the output of the plants, correct?

18 A. While it doesn't say those specific
19 words, it says that the liability would be limited to
20 direct damages. Those are the direct damages
21 associated with this term sheet.

22 Q. Are you referring -- and I am looking at
23 page 10 of the term sheet. Are you referring to the
24 sentence that reads, "For breach of any provision of
25 the Agreement, obligor's liability shall be limited

1 to direct damages only, such direct damages shall be
2 the sole and exclusive remedy and all other remedies
3 and damages are waived"?

4 A. That's correct.

5 Q. Okay. And Section 19 also states that,
6 "No party shall be liable for consequential,
7 incidental, punitive, exemplary, or indirect damages,
8 lost properties or other business interruption
9 damages, correct?

10 A. That's correct.

11 Q. Okay. Mr. Moul, you provided input on
12 certain aspects of the term sheet, correct?

13 A. Not on the term sheet itself, on certain
14 aspects of the negotiation and -- and contentious
15 issues. I provided some input to the team, but I did
16 not participate in this specific drafting of the term
17 sheet.

18 Q. So you provided input regarding certain
19 issues that are addressed in the term sheet; is that
20 a fair statement?

21 A. That's correct.

22 Q. Okay. But you did not provide any input
23 into the issues discussed in Section 19 of the term
24 sheet, correct?

25 A. That's correct.

1 Q. And with respect to Section 19 of the
2 term sheet, you don't have any opinions about the
3 damages allowed under that section other than what's
4 written in the words of it, correct?

5 A. Well, that sounds remarkably close to my
6 testimony when I was here about a month and a half
7 ago, and since then I have had a chance to take a
8 look at the words of it. I really hadn't thought
9 about it before my testimony. But, you know, I've
10 had some experience with commodity contracts, so
11 after looking at it and evaluating it, that's how I
12 read it.

13 Q. So at the time that you -- so when you
14 testified in this hearing about a month ago, at that
15 time you did not have any opinions about what the
16 damages allowed under the Section 19 would be other
17 than what's written in the words of it, correct?

18 A. Beyond the written words, that's correct.
19 Now, what I've told you today is reading the words
20 and understanding what direct damages are in other
21 commodity contracts I've dealt with. My opinion and
22 my view on that is essentially included in my
23 rebuttal testimony.

24 MR. SOULES: Your Honor, I would move to
25 strike everything in his answer starting with "Now,

1 what I've" as being nonresponsive to the question.

2 EXAMINER ADDISON: Consistent with our
3 practice, we are going to deny the motion to strike.

4 But, Mr. Moul, please just answer
5 counsel's question and Mr. Lang will certainly raise
6 any additional information on redirect.

7 THE WITNESS: All right. Thank you.

8 EXAMINER ADDISON: Thank you.

9 Q. (By Mr. Soules) Mr. Moul, you are not
10 aware of what the financial consequences would be if
11 FES would terminate before the end of the 15-year
12 period of the transaction, correct?

13 A. Well, first of all, there is no
14 termination allowance in the contract, so I don't
15 really understand what you are asking me. As I have
16 in my testimony, other than Section 20, inability to
17 get any approvals, governmental approvals, that's the
18 only -- that's the only way out of this 15-year
19 contract.

20 MR. SOULES: Your Honor, may I have the
21 last question and answer read back.

22 EXAMINER ADDISON: You may.

23 (Record read.)

24 Q. Mr. Moul, do you remember having your
25 deposition taken on January 15 of this year?

1 A. It's been awhile, but I recall, yeah.

2 Q. And you were under oath at that
3 deposition, correct?

4 A. That's correct.

5 MR. SOULES: Your Honor, may we approach?

6 EXAMINER ADDISON: You may.

7 Q. (By Mr. Soules) Mr. Moul, you have been
8 handed an excerpt of the transcript for your
9 deposition that was taken on January 15, 2015. If
10 you could, please turn to page 80 -- sorry about
11 that. Mr. Moul, if you could please turn to page 84
12 of the deposition transcript.

13 A. Okay.

14 Q. Looking at lines 12 through 15, were you
15 asked the following question and did you give the
16 following answers to the question:

17 "Okay. And are you aware of what the
18 financial consequences would be if FES were to
19 terminate before the end of the 15-year period?

20 Answer: No."

21 Did I read that correctly?

22 A. Where are you again? Which line?

23 Q. I am looking at lines 12 through 15 on
24 page 84.

25 A. You read that correctly.

1 Q. Thank you. Mr. Moul, you don't know what
2 lost profits means in the context of Section 19 of
3 the term sheet, correct?

4 A. I know what lost profit means with
5 respect to typical commodities contracts we've worked
6 with, so my opinion is based upon my experience.

7 MR. SOULES: Your Honor, may I have that
8 answer read back?

9 EXAMINER ADDISON: You may.

10 (Record read.)

11 MR. SOULES: Your Honor, I would move to
12 strike that answer as nonresponsive to the question.

13 EXAMINER ADDISON: I think it was
14 responsive. Motion to strike is denied.

15 Q. (By Mr. Soules) Mr. Moul, could you
16 please take a look at page 7 of your rebuttal
17 testimony.

18 A. Okay.

19 Q. Now, starting on line 15, there is a
20 sentence which begins, "Even if Dr. Bowring were
21 correct that the Companies intend to treat the Plants
22 like regulated units, which is pure speculation," and
23 then the sentence goes on from there. Do you see
24 that reference in your testimony?

25 A. Yes, I do.

1 Q. So it's your opinion it's pure
2 speculation that the companies would manage the
3 plants like regulated units; is that correct?

4 A. With respect to the PJM markets and
5 offering them in and operating them within the PJM
6 markets, yes, that's my opinion. It was essentially
7 addressing Dr. Bowring's statements about PJM markets
8 so that's why I am putting the qualifier on the front
9 end of that.

10 MR. SOULES: Your Honor, I have nothing
11 further for the public section.

12 EXAMINER ADDISION: Thank you,
13 Mr. Soules.

14 Let's go off the record for a moment.

15 (Discussion off the record.)

16 EXAMINER ADDISON: Let's go back on the
17 record.

18 Ms. Willis.

19 MS. WILLIS: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Willis:

23 Q. Good morning, Mr. Moul.

24 A. Good morning.

25 Q. Mr. Moul, now I want to turn to page 2

1 lines 9 through 10 of your testimony.

2 A. Okay.

3 Q. You state, "Any purchaser would face the
4 same short-term uncertainty that FES with the
5 Plants..." Do you see that?

6 A. Yes, I do.

7 Q. And am I correct you conclude the future
8 of the plants is uncertain?

9 A. That's correct.

10 Q. And the short-term uncertainty you are
11 referring to is caused by a number of factors; is
12 that correct?

13 A. Yes. It's caused by a number of factors,
14 but predominantly the energy prices are the biggest
15 factor.

16 Q. Would you include as the factors that
17 impact on the short-term uncertainty the losses that
18 were incurred from the units from 2009 through 2014?

19 A. As that impacts FES's balance sheet, yes.

20 Q. Okay. And would you also consider a
21 factor that effect the short-term uncertainty the
22 earned return on equity?

23 A. I guess, as you would, say the lack of
24 return on equity over the last few years, yes, I
25 would agree.

1 Q. And would you also agree that the
2 short-term uncertainty that FES faces with the plants
3 is associated with the need for capital investment in
4 the plants?

5 A. To a lesser degree, but yes.

6 Q. And, finally, would you agree that the
7 short-term uncertainty that you are referring to is
8 related to the need to borrow money at a reasonable
9 cost?

10 A. Yes.

11 Q. Now, you believe, Mr. Moul, that the
12 plants are not receiving sufficient revenue to cover
13 their costs, correct?

14 A. That's correct.

15 Q. And you relied on the profit and loss
16 statements provided by Mr. Lisowski in reaching that
17 conclusion?

18 A. Yes.

19 Q. And you also believe that -- and you
20 testified in this proceeding that FES may not be
21 financially able to bear the short-term losses
22 associated with the plants, correct?

23 MR. LANG: Objection, your Honor.

24 EXAMINER ADDISON: Grounds?

25 MR. LANG: At this point beyond the scope

1 of rebuttal. She is covering questions -- and,
2 actually, that was a direct quote from his
3 supplemental testimony which has already been asked
4 about, she has already inquired about. It's beyond
5 the scope of rebuttal.

6 EXAMINER ADDISON: Ms. Willis, response?

7 MS. WILLIS: Yes, your Honor. This
8 witness testifies about the short-term uncertainty
9 that FES faces with the plants, and my questions are
10 going to that short-term uncertainty. He used the
11 phrase on page 2, lines 9 through 10, and that's what
12 my questions are going to.

13 MR. LANG: And, your Honors, asking him
14 specifically about prior testimony that she's already
15 cross-examined him on is textbook beyond the scope of
16 rebuttal.

17 EXAMINER ADDISON: We are going to allow
18 the question. The phrase "short-term uncertainty"
19 seems pretty broad, and if Ms. Willis wants to kind
20 of go into that phrase and what's the understanding
21 behind that phrase in his testimony, she is entitled
22 to do so.

23 MS. WILLIS: Thank you, your Honor. I
24 believe there is a question pending, Mr. Moul.

25 THE WITNESS: Could you read the

1 question, please.

2 EXAMINER ADDISON: Yes, please. Thank
3 you.

4 (Record read.)

5 A. Yes.

6 Q. And would you agree with me that part of
7 the issue that creates the short-term uncertainty
8 that FES faces with the plants is the cash flow
9 generated by the plants?

10 A. Yes.

11 Q. And it's your understanding that during
12 the historic period of losses from 2009 through 2014
13 that the plants had negative cash flows, correct?

14 MR. LANG: Objection, your Honor. I
15 think we are getting into again areas of his
16 supplemental testimony that's already been provided
17 that was identified as confidential, and so I would
18 ask that questions, particularly that counsel for OCC
19 knows have already been designated as confidential,
20 be treated as confidential for purposes of this
21 hearing. And I think -- I think the question should
22 be moved into the confidential portion of the record
23 and, obviously, the answer would be also.

24 MS. WILLIS: Your Honor, my question
25 really went to just negative cash flows. I wasn't

1 being specific about how much negative cash flows. I
2 don't believe the fact that the plants have negative
3 cash flows is confidential.

4 EXAMINER ADDISON: I would like to err on
5 the side of caution here. We'll move the question to
6 the confidential session. If we find out later we
7 can move it into the public, we will do so then.

8 MS. WILLIS: Thank you, your Honor.

9 MR. LANG: Thank you, your Honor.

10 Q. (By Ms. Willis) Now, you testify on page
11 4, lines 16 through 20, that the largest cost
12 components for Davis-Besse are labor and
13 depreciation; is that correct?

14 A. That's correct.

15 Q. And that one of the largest of the Sammis
16 costs is fuel, correct?

17 A. That's correct.

18 Q. Are you familiar with the internal Cash
19 Flow Improvement Project that has been undertaken by
20 FirstEnergy Corporation?

21 A. Yes, I am.

22 Q. Okay. And is it fair to describe that
23 project as a combination of expense reductions and
24 capital expenditure reductions for the competitive
25 generation segment of FirstEnergy Solutions?

1 A. As well as the remainder of FirstEnergy,
2 but, yes.

3 Q. And do you understand that Cash Flow
4 Improvement Project was launched in April of 2015?

5 A. Yes.

6 Q. And do you understand, Mr. Moul, that
7 targets for the internal Cash Flow Improvement
8 Project were announced for the years 2015, 2016, and
9 2017?

10 A. Yes.

11 Q. And do you understand that over a 12-week
12 timeframe, a team of senior executives, led by Donny
13 Schneider, committed to identify projects that would
14 lead to sustainable cash savings for the competitive
15 generation services?

16 A. Yes.

17 Q. And do you understand that under the Cash
18 Flow Improvement Project, that cash savings for the
19 competitive generation segments are expected?

20 A. Yes.

21 Q. Are you aware of the cash savings
22 expected in 2015?

23 A. I don't remember the number off the top
24 of my head.

25 Q. Are you aware of the cash savings

1 expected in 2015 being \$58 million?

2 A. It sounds close, so I don't know that
3 that's the exact number. I don't remember.

4 Q. And are you aware of additional cash
5 savings expected in 2016?

6 A. Yes.

7 Q. And are you aware of the additional cash
8 savings being expected of \$155 million?

9 A. That sounds close. It's above the target
10 that was set of \$150 million.

11 Q. And are you aware of the additional cash
12 savings expected in 2017 of \$240 million?

13 A. That sounds correct.

14 Q. So the total free cash-flow improvement
15 associated with this particular project over the 2015
16 and through 2017 period is \$453 million, correct?

17 A. I think that math is correct, yes.

18 Q. Is it your understanding that only a
19 small portion is expected from the regulated or
20 noncompetitive segment?

21 A. Yes.

22 Q. That would leave 96 percent of the free
23 cash-flow improvement coming from the competitive
24 segment?

25 A. I'm not sure about the percentage, but I

1 know that the largest portion comes from the
2 competitive side of the business.

3 Q. And, Mr. Moul, do you understand where
4 the cash-flow improvement under the project is
5 expected?

6 A. I couldn't give you detail by detail
7 where it is. I know there are large portions of it
8 coming from competitive generation as well as from
9 the fuel costs.

10 Q. Would you agree with me that under the
11 Cash Flow Improvement Project that there are expected
12 to be operation and maintenance expense reductions?

13 A. Yes.

14 Q. And those would be associated with the
15 competitive generation plants?

16 A. Yes.

17 Q. And is it your understanding that
18 included as an operating and expense reduction would
19 be expense reductions associated with selective
20 hiring programs?

21 A. Yes.

22 Q. And is it also your understanding that
23 the operating and expense reductions under the
24 program are expected to come from a reduction in
25 shared-service expenses as well?

1 A. Yes.

2 Q. And is it your understanding that the
3 operating and maintenance expense reductions expected
4 under the Cash Flow Improvement Project are expected
5 as well to come from customer service opportunities?

6 A. I don't recall that one specifically, but
7 as I said earlier, it was across the company looking
8 for ways to improve cash flow, so it wouldn't
9 surprise me to find out that customer service
10 opportunities were part of it.

11 Q. And is it your understanding that under
12 the Cash Flow Improvement Project, operating and
13 maintenance expense reductions are expected
14 associated with reduced contractor and consulting
15 spend?

16 A. Yes.

17 Q. And is it also your understanding under
18 the Cash Flow Improvement Project that operating and
19 maintenance expense reductions are expected through
20 reduced dues and fees?

21 A. Yes.

22 Q. And is it also your understanding that
23 under the Cash Flow Improvement Project the operating
24 and maintenance expense reductions are expected to
25 result from a reduction in corporate aircraft?

1 A. Yeah. I think that's the case, yes.

2 Q. And as part of the Cash Flow Improvement
3 Project, there is an expectation that there will be
4 fossil fuel reduction, correct?

5 A. Yes.

6 Q. And as part of that project, there is an
7 expectation that there will be a lower spend at the
8 generating units, correct?

9 A. Yes.

10 Q. And that that lower spend at the
11 generating units will result in a reduction in
12 facilities spend?

13 A. That's correct.

14 Q. And is it also your understanding that
15 under the Cash Flow Improvement Project that there is
16 expected to be a reduction in discretionary uranium
17 purchases?

18 A. Yes, that's correct.

19 Q. And that would be associated with the
20 nuclear unit?

21 A. Yes.

22 Q. And is there also an expectation that
23 under the Cash Flow Improvement Project that there
24 will be reduced expenses through the sales of real
25 estate?

1 A. Yes.

2 Q. Are you aware of the actual flow --
3 cash-flow improvement for FES that has been achieved
4 to date for 2015 under the Cash Flow Improvement
5 program?

6 A. I don't know the specific number, but I
7 know that it's reflected in our budgets that we are
8 operating with today.

9 Q. Now, under the Cash Flow Improvement
10 program, is it anticipated that the reduced capital
11 expenditures will cause the operations of FES to
12 suffer?

13 THE WITNESS: Could you read that
14 question back?

15 (Record read.)

16 MR. LANG: Your Honor, I would object.
17 Again, beyond the scope of his rebuttal testimony.
18 The cost information that Mr. Moul provides is
19 specific to the Sammis plant and the Davis-Besse
20 plant. I was expecting questions on the Cash Flow
21 Improvement Project would lead to questions specific
22 to Sammis and Davis-Besse. This question is not.
23 It's a general question about FES overall, so I would
24 object.

25 EXAMINER ADDISON: Would you like to

1 rephrase your question, Ms. Willis?

2 MR. HAYS: Your Honor, if I may be heard
3 on this.

4 EXAMINER ADDISON: Certainly, Mr. Hays.

5 MR. HAYS: There is continuous testimony
6 in these about the balance sheet and the strength of
7 the balance sheet and the overall corporate health.
8 The witness himself has testified you have to look
9 not just at cash flow, but you have to look at the
10 balance sheet. This clearly is going into the
11 broader picture that he -- the witness is talking
12 about. I believe on, behalf of NOAC, it's a
13 legitimate question, and we are entailed to an
14 answer.

15 EXAMINER ADDISON: Ms. Willis, do you
16 have anything to add?

17 MS. WILLIS: No, your Honor. I do not.
18 Thank you, Mr. Hays.

19 EXAMINER ADDISON: Mr. Lang, response?

20 MR. LANG: Your Honor, I simply stand on
21 the testimony that he has provided. This question is
22 beyond the scope of his testimony. If she wants to
23 rephrase and ask questions about the impact of the
24 Cash Flow Improvement Project on costs at Sammis or
25 Davis-Besse, that would be within the scope of his

1 testimony, but the question she asked is not.

2 EXAMINER ADDISON: We are going to
3 sustain the objection.

4 Ms. Willis, you can certainly ask the
5 question directed towards Sammis and Davis-Besse, if
6 you would like.

7 MS. WILLIS: Thank you, your Honor.

8 Q. (By Ms. Willis) Mr. Moul, is it
9 anticipated under the Cash Flow Improvement program
10 that FES has undertaken that reduced capital
11 expenditures will cause the operations of Sammis or
12 Davis-Besse to suffer?

13 A. With respect to Davis-Besse, I would say
14 we do not expect that because of the high standards
15 of operation and the cost of bringing a plant, a
16 nuclear plant, out of regulatory challenges is just
17 too high, so their capital spend at Davis-Besse is
18 meant to maintain levels of excellence and prevent
19 that from occurring.

20 With respect to Sammis, as I mentioned
21 earlier, as revenues are down and as our ability to
22 spend on improvements and reliability are curtailed,
23 then there is a potential that the reliability
24 performance of the Sammis unit could suffer.

25 Q. Was the Cash Flow Improvement Project

1 approved by executive management at First Energy
2 Solutions?

3 A. Yes.

4 Q. Is it anticipated under the Cash Flow
5 Improvement program that FES has undertaken that
6 reduced capital expenditures related to Davis-Besse
7 and Sammis will cause revenues to decline for FES?

8 A. Well, as I mentioned for Davis-Besse, I
9 don't expect a large difference there in the capital
10 expenditures. Revenues declining would be more of a
11 function of energy market values changing.

12 With respect to the Sammis plant, if
13 we're successful in maintaining reliability at our
14 targets, then it may help the revenues in that we are
15 not spending as much. But, as I mentioned earlier,
16 if there are reliability challenges based on not
17 spending on reliability improvements, it would erode
18 any potential improvement in revenues.

19 Q. Is it anticipated, Mr. Moul, that under
20 the Cash Flow Improvement program that FES has
21 under -- that FE has undertaken, that the reduced
22 capital expenditures for Sammis and Davis-Besse will
23 cause revenues to decline and lead to the plants not
24 being able to cover avoided costs?

25 A. I don't know. That's the uncertainty

1 that I've testified about.

2 Q. Is it anticipated under the Cash Flow
3 Improvement program that FE has undertaken that the
4 reduced capital expenditures associated with
5 Davis-Besse and Sammis will cause revenues to decline
6 and lead to the shutdown of the plants as the obvious
7 outcome?

8 A. Is -- I mean, I hear that as kind of the
9 same question you just asked me, which is not
10 covering your avoidable costs, then a potential
11 shutdown. So I would say that's the uncertainty I am
12 talking about in my testimony.

13 Q. Are you familiar at all with the Fact
14 Book that was published by FirstEnergy?

15 A. Yes, I am.

16 Q. And can you tell me what your familiarity
17 is with that?

18 A. At a very high level. If you would go
19 down the Fact Book and try to quiz me on numbers, I
20 won't be able to give you answers on that.

21 Q. Would you -- is it your understanding
22 that the Fact Book statements are true statements and
23 true representations by FE?

24 A. As I understand it, yes.

25 Q. Okay. And can you tell me what the

1 purpose of the Fact Book is, if you know?

2 A. My understanding is it's to provide
3 additional information on the company for investors
4 so they have an understanding of our business.

5 Q. Is it your understanding the Fact Book is
6 a regularly published publication that is available
7 to investors on your website?

8 A. That's my understanding.

9 MS. WILLIS: That's all the questions I
10 have. Thank you, Mr. Moul.

11 EXAMINER ADDISON: Thank you.

12 Mr. Oliker?

13 Ms. Fleisher?

14 MS. FLEISHER: Yes, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Fleisher:

18 Q. Mr. Moul, my name is Madeline Fleisher.
19 I represent the Environmental Law and Policy Center.
20 You remember me from a few weeks back?

21 A. I do. Good morning.

22 Q. If you could turn quickly to page 2 of
23 your testimony, your rebuttal testimony.

24 A. Okay.

25 Q. Just to follow-up on your question with

1 Mr. Soules, I believe you said that the units that
2 you list on lines 17 to 23 were retired, in part,
3 because of EPA's MATS regulation; is that correct?

4 A. The capital expenditure to make them
5 compliant with the MATS regulation, that's correct.

6 Q. And were they also facing capital
7 expenditures to comply with other-than-existing or
8 pending environmental regulations?

9 A. I don't know.

10 Q. And can you go to page 7 of your
11 testimony, please.

12 A. Okay.

13 Q. And starting on line 18 you testified,
14 "There is at least 22,653 MW of regulated generation
15 in PJM plus another 4,915 MW owned by municipal or
16 cooperatives, or about 17% of PJM's 2015 non-FRR
17 installed capacity." Did I read that correctly?

18 A. Yes, you did.

19 Q. Do you know whether all of those
20 megawatts are bid into the PJM energy and capacity
21 markets as opposed to being used to serve customer
22 load?

23 A. Well, that's why we segregated out the --
24 the FRR units associated with it. Now, I do not know
25 specifically whether they're offered into the energy

1 markets versus serving customer load, but I do know
2 that they are offered into the capacity market
3 because they are required to. There is a must-offer
4 requirement for the capacity market.

5 Q. Okay. But you are not making any
6 assertion as to their participation in energy
7 markets, correct?

8 A. That's correct.

9 Q. And are you familiar with the integrated
10 resource planning process used in the states where
11 that regulated generation is located?

12 A. I understand that there is an integrated
13 resource planning process. I understand that it
14 looks at different classes of assets and makes plans
15 based on load forecasts. That's about as far as it
16 goes for me anyway.

17 Q. Are you familiar generally with the
18 concept of the integrated resource -- pardon me,
19 integrated resource planning process does include
20 looking at potentially competing demand-side or
21 supply-side resources when considering what resources
22 to use to serve load?

23 A. In the energy markets you are talking
24 about?

25 Q. In both energy and capacity markets.

1 A. I'm aware that that's included in some
2 states, integrated resource planning.

3 Q. And do you know whether any of these
4 states have identified new natural gas generation
5 resources as resources to be built to replace
6 retiring coal plants?

7 A. Are you specifically talking about --
8 when you say "these states," the ones that are --

9 Q. The states where the regulated generation
10 that you refer to are located.

11 A. I'm aware that there are some natural gas
12 plants being built in Virginia as well as New
13 Jersey -- sorry, West Virginia. I am not sure about
14 New Jersey off the top of my head nor about Illinois,
15 but I don't doubt that there are some natural gas
16 plants being built in those areas based on the
17 commodity prices right now.

18 Q. Okay. And you haven't done any analysis
19 of whether the participation of regulated generation
20 in PJM energy and capacity markets affects energy or
21 capacity prices, have you?

22 A. The reason I've included it here is to
23 essentially state it's already occurring. There's
24 already regulated generation and capacity and energy
25 markets in PJM right now as opposed to what

1 Dr. Bowring is speculating, that it's going to change
2 the way the markets are. They're already that way.
3 They already have regulated generation in the
4 capacity and energy markets. I have not done any
5 additional studies to say whether they are -- whether
6 these units would impact the marketplace.

7 MS. FLEISHER: Your Honor, I move to
8 strike the first portion of that answer before "I
9 have not done any analysis" as nonresponsive to my
10 question. That was regarding his rationale for
11 providing this testimony but wasn't an answer to what
12 I had asked.

13 EXAMINER ADDISON: Mr. Lang?

14 MR. LANG: Could we have the question
15 read back, please.

16 EXAMINER ADDISON: We may.

17 The question and answer, please.

18 (Record read.)

19 MR. LANG: And, your Honors, to the
20 question of whether he had done any analysis of
21 whether these units are affecting energy and capacity
22 prices, I believe his answer was responsive. He's
23 saying his -- the analysis that he has done is that
24 these units are currently in the markets, and then
25 his -- the last part of the answer was he hasn't done

1 additional analysis beyond that with respect to
2 Sammis and Davis-Besse.

3 MS. FLEISHER: Your Honor, if I may
4 respond.

5 EXAMINER ADDISON: You certainly can,
6 Ms. Flesisher.

7 MS. FLEISHER: Certainly. I particularly
8 asked whether he had analyzed how the participation
9 in the markets affected prices, not in his -- that
10 portion of his answer speaks only to the fact that
11 these units exist in the market, not how they relate
12 to -- how they might affect prices and, therefore,
13 it's, again, not getting to what I was asking him.

14 EXAMINER ADDISON: Thank you.

15 We are going to grant the motion to
16 strike for the answer starting from the beginning to
17 the words "capacity and energy markets," so now that
18 the answer reads, "I have not done any additional
19 study," and it continues from there.

20 MS. FLEISHER: Thank you, your Honor.

21 Q. (By Ms. Fleisher) And in that last answer
22 when you said "these units," you were referring to
23 the regulated units that you list in your attachment,
24 correct?

25 A. That's correct.

1 Q. Okay. So are you offering any opinion as
2 to how the participation of those units in PJM
3 markets affects PJM market prices?

4 A. What I am offering is there are 22,653
5 megawatts of regulated generation already in those
6 markets, and that an additional 3,000 megawatts in a
7 similar approach wouldn't impact the market in a
8 significant manner.

9 Q. Okay. And the basis for your assertion
10 that adding another 3,000 megawatts wouldn't affect
11 prices, is based on what?

12 A. If -- if the market monitor is
13 comfortable with 22,000 megawatts of regulated
14 generation competing in the marketplace, a small
15 percentage of that on top of the 22,000 is not
16 significant.

17 Q. Okay. And so are you asserting that you
18 have a basis for saying that the participation of
19 those additional 3,000 megawatts won't affect prices?

20 A. My assertion is that they won't
21 appreciably affect prices based on the small
22 percentage of megawatts based on what's already
23 regulated in the marketplace.

24 MS. FLEISHER: That's all I have, your
25 Honors. Thank you.

1 EXAMINER ADDISON: Thank you.

2 MR. LANG: Your Honors, could we take a
3 break at this time, ten minutes?

4 EXAMINER ADDISON: Sure. Let's take a
5 10-minute break. Let's go off the record.

6 (Recess taken.)

7 EXAMINER ADDISON: Let's go back on the
8 record.

9 Mr. Oliker.

10 MR. OLIKER: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Oliker:

14 Q. Good afternoon, Mr. Moul.

15 A. Good afternoon.

16 Q. I had to check that. Starting on --
17 starting at the end of your testimony, actually,
18 first, have you reviewed any of FERC's orders
19 regarding the construction of capacity markets?

20 A. Could you be more specific?

21 Q. Did you read the original order approving
22 the reliability pricing model?

23 A. No.

24 Q. Are you familiar with the minimum offer
25 price rule?

1 A. I'm familiar with it in concept, but I
2 don't know the details of it.

3 Q. So you haven't read any of FERC's orders
4 discussing the minimum offer price rule?

5 A. I have read some of those orders, yes,
6 but I wouldn't be able to quote them to you today.

7 Q. Now, you talked with Ms. Fleisher about
8 the integrated resource planning that occurs in
9 regulated states. Do you remember that conversation?

10 A. Yes.

11 Q. And isn't it true that FERC has indicated
12 that it is not concerned, in part, about regulated
13 state resources participating in the capacity market
14 because of their integrated resource model?

15 A. I don't know.

16 Q. So you don't know if FERC has indicated
17 it's not concerned about regulated state capacity
18 resources bidding in the market because there is no
19 incentive to manipulate price?

20 A. Again, I don't know and wouldn't want to
21 speculate.

22 Q. And you don't know if FERC has indicated
23 that it's not concerned about these resources in
24 regulated states participating in the capacity market
25 because there is no incentive to overbid?

1 A. Again, I don't know.

2 Q. And moving up your testimony, when you
3 indicate --

4 A. Could you give me a reference?

5 Q. On page 2 line 11, "It is possible FES
6 may get an offer for only \$1 million." Would you
7 agree that if FirstEnergy Solutions gets an offer of
8 \$1 million plus the agreement to assume any legacy
9 obligations for an asset that FES would otherwise
10 retire, that's a good deal?

11 A. So let me see if I understand your
12 hypothetical. There is an offer of a million
13 dollars, and when you say "assuming all legacy debt,"
14 what does that include as part of the offer?

15 Q. Assume it's \$200 million.

16 A. What I would tell you is that it would
17 depend upon the value that we placed in the plant
18 equipment and the property for future development
19 that would determine whether or not that would be a
20 reasonable offer.

21 Q. So your answer is it could be a good
22 offer?

23 A. I can tell you what I know, which is we
24 were given an offer for one of those plants for a
25 million dollars and it was not a reasonable offer.

1 MR. OLIKER: Your Honor, I move to
2 strike. That was not responsive to my question. I
3 asked the witness about an offer of \$1 million plus
4 assuming \$200 million of legacy obligations in debt,
5 and he came back and said merely that they received
6 an offer of \$1 million, which is on a completely
7 different issue.

8 EXAMINER ADDISON: Mr. Lang.

9 MR. LANG: And, actually, your Honor,
10 what Mr. Oliker just described is the question he
11 asked was not the last question presented to the --
12 to Mr. Moul, I believe. So Mr. Moul is responding to
13 the last question and saying -- asking him to
14 speculate as to whether something could be a good
15 offer, and he said, you know, what he knows is based
16 on the facts before him that what -- that he has
17 received something that's not a good offer, so that's
18 how he responded to that question for him to
19 speculate in that manner.

20 EXAMINER ADDISON: I tend to agree. I am
21 going to deny the motion to strike.

22 Q. (By Mr. Oliker) And the next line you
23 say, "In that case, a business owner gets more from
24 retirement, through salvage and maintaining control
25 of the site for future development."

1 Would you agree that the ability to
2 develop the site that holds Davis-Besse in the future
3 would be limited?

4 A. No, I would not agree to that.

5 Q. You are not going to open up condos, are
6 you?

7 A. Well, it is waterfront.

8 Location, location, location.

9 Q. And if Sammis were to close, would you
10 agree there would be environmental remediation costs
11 that would have to be considered?

12 A. Yes.

13 Q. Likewise, if Davis-Besse, there would be
14 nuclear decommissioning costs.

15 A. Yes.

16 Q. Moving to page 3, line 8 --

17 A. 3, line 8, did you say?

18 Q. Yes. Without indicating the number
19 that's contained on that line because it's
20 confidential, do you know how that number is
21 calculated?

22 A. We take our variable costs. Our
23 generation dispatch group does the calculations in
24 accordance with the PJM manual for calculating those
25 on the cost-offer side, and then price offer can be

1 anything you want up to, I think, \$999. But, yeah,
2 we will calculate that based on our variable costs.

3 Q. Do you know how to make that calculation?

4 A. I have not personally made that
5 calculation.

6 Q. Do you know how to make it?

7 A. I would call my generation dispatch group
8 and tell them to calculate the number, but I
9 personally won't be the one to do that.

10 Q. So if, for example, I were to give you a
11 coal price per ton and the heat rate, could you tell
12 me what the dispatch cost of a unit is?

13 A. Well --

14 Q. And BTU content as well.

15 A. There is more than that. There is
16 reagent costs. There is variable O&M, how much to
17 decide to put into the variable O&M. That's what I
18 would tell you. I wouldn't be the one to calculate
19 that. I would have the experts in generation
20 dispatch do that calculation.

21 Q. Okay. So at a high level, are you
22 familiar with the impact of how the change in price
23 of coal may affect the dispatch of the coal unit?

24 A. Yeah. I mean, at the highest level,
25 right. Assuming BTU content is held constant, right,

1 the lower the coal price, the lower the dispatch cost
2 and the more the plant will dispatch.

3 Q. Would you agree for about every \$2.50 per
4 ton, the coal pile changes? Assuming 12,000 BTU
5 content coal, it's a dollar per megawatt-hour?

6 A. I don't know. I would have someone run
7 those numbers to validate them.

8 Q. A moment ago you indicated you have a
9 high-level understanding of how changes in coal
10 prices impact the dispatch costs of a unit. How high
11 of a level understanding do you have? Could you
12 elaborate a little bit?

13 A. What would you like to know?

14 Q. How much does the price of coal have to
15 change to change the dispatch cost of a coal unit?

16 A. It depends on how far down you want to
17 calculate down that value. Any change in coal prices
18 has a direct impact on its variable costs, and that
19 would eventually make its way through to whatever its
20 dispatch costs is. It depends on the blends of coal
21 that you are using. There are a lot of variables
22 that would go into what that -- what that number is,
23 which is why, although I won't go into the numbers,
24 why there is a range presented in my confidential
25 testimony.

1 Q. I am trying to think if I can do this in
2 the public. If the price of coal were to move \$10
3 per ton away from Mr. Rose's forecast, can you tell
4 me if the numbers indicated on line 8 would still be
5 valid?

6 A. So I'm trying to understand your
7 question. When you "say coal price would move \$10
8 away from Mr. Rose's projection," which direction?

9 Q. Higher.

10 A. Higher coal prices?

11 Q. Yes.

12 A. Well, as I said, any change in coal price
13 would change the dispatch costs associated with any
14 plant in PJM's footprint that's burning coal.
15 Although I'll tell you, based on market indices, and
16 what I've seen either on the coal desk information
17 that's out there or Boyd's long-term price forecasts,
18 those are all typically below the numbers Mr. Rose
19 has.

20 MR. OLIKER: Your Honor, I would move to
21 strike. I think it's everything after where he said
22 "any change in the coal price will change the
23 dispatch cost," that was not responsive to my
24 question either.

25 EXAMINER ADDISON: Mr. Lang.

1 MR. LANG: And, your Honor, he is
2 responding to an extremely broad hypothetical that he
3 actually had to get clarification, to some extent, as
4 to what was being asked. And Mr. Moul responded to
5 the hypothetical as to the impact of the changes in
6 coal prices, and also said that one element of the
7 hypothetical which was price increases, was based on
8 current forwards and correct, so I don't believe that
9 any part of the response should be stricken because
10 all of the response was addressing the hypothetical
11 presented.

12 MR. OLIKER: Your Honor, he didn't answer
13 the hypothetical. He said that the indices showed
14 lower prices, and I asked him to assume something
15 completely different, and that was my question which
16 he never provided a response to.

17 MR. LANG: And, your Honor --

18 EXAMINER ADDISON: Mr. Lang.

19 MR. LANG: Your Honor, he answered if you
20 change the coal price, it will change the variable
21 costs, which he has already testified to and so he
22 answered that. And then also explained why the
23 hypothetical is not based on fact.

24 EXAMINER ADDISON: Mr. Oliker, just to
25 clarify, you were moving to strike the entire answer

1 as unresponsive? I just want to be sure.

2 MR. OLIKER: Everything after he said
3 "any change in coal price will move the dispatch
4 cost," which I believe is the beginning sentence of
5 his answer, everything after that, I would move to
6 strike. He said it was tangentially close to my
7 question.

8 EXAMINER ADDISON: Thank you, for that.
9 We will grant the motion to strike for everything
10 starting with the word although."

11 MR. OLIKER: Thank you, your Honor.

12 Q. (By Mr. Olikier) Another way to come at
13 this, Mr. Moul, on page 4, line 8, you indicate we do
14 not expect the costs of Sammis to be volatile over
15 the next 15 years. Do you know what coal prices were
16 in 2008?

17 A. I don't know the exact value.

18 Q. Would you agree they were over \$100 per
19 ton?

20 A. All I know, they were higher than they
21 are today.

22 Q. Do you know --

23 A. I don't know that they were over \$100.
24 It would depend on the quality of the coal, the type
25 of coal. There are a lot of variables to your

1 hypothetical.

2 Q. Would you agree that Northern Appalachian
3 coal with a BTU content of 13,000 sulfur content, 3
4 point or above was \$140 a ton?

5 A. I don't have that number memorized, so I
6 cannot agree because I don't know.

7 Q. You indicated that prices were higher
8 than today. Were they higher by \$10 a ton or a
9 bigger number than that in your mind?

10 A. Which prices are you talking about?

11 Q. 2008 prices for Northern Appalachian
12 coal.

13 THE WITNESS: Okay. Can you read the
14 question back again? I am trying to make sure I am
15 answering the right question.

16 (Record read.)

17 A. More than \$10 per ton.

18 Q. Okay. Were they \$50 per ton higher than
19 they were -- than they are today?

20 A. I don't know exactly. I know they were
21 more than \$10 per ton.

22 Q. Okay. If prices in 2008 were nearly
23 three times what they are today, would you consider
24 that a volatile change?

25 A. Over what time frame are you talking

1 about? From 2008 until today?

2 Q. Well, do you know what prices were in
3 2009?

4 A. I don't know that number off the top of
5 my head.

6 Q. What about coal prices in 2010?

7 A. It depends on which coal you are talking
8 about.

9 Q. How about Northern Appalachian coal?

10 A. I don't know the number for 2010.

11 Q. How about 2007?

12 A. I don't know 2007.

13 Q. Can you tell me the price of Northern
14 Appalachian coal in any year between 2000 and 2007?

15 A. No.

16 Q. What about between 2008 and 2013?

17 A. Yes, I can.

18 Q. What year?

19 A. 2012.

20 Q. And would you agree it was \$80 a ton?

21 A. No. I would agree that we had some
22 contracts that were much less than \$80 a ton, but
23 not -- this is probably more for a confidential
24 section if we are going to be talking about -- my
25 knowledge comes from the contracts that we had in

1 place at FES so it's really probably more for the
2 confidential section.

3 Q. Okay. We'll save that one. Can you tell
4 me the price of Northern Appalachian coal for any
5 other year besides 2012?

6 A. I can tell you the price trends from
7 2012, 2013, 2014, and today because I was involved at
8 FirstEnergy Solutions as part of commodity
9 operations, so we negotiated fuel contracts.

10 Q. And your understanding is solely based
11 upon those contracts, not necessarily market trends?

12 A. That's not true because a fair number of
13 those contracts had market price reopeners, so you
14 would do a comparison of that coal contract price for
15 maybe a tranche of one of the contracts versus the
16 market index that was the similar quality of coal.
17 So I may not have those numbers memorized, but I do
18 know the general values over that time frame.

19 Q. Okay. And, let's see, you indicate on
20 page 4 that depreciation and labor are the largest
21 component of costs at Davis-Besse.

22 Now, would you agree depreciation is not
23 likely to be a volatile experience, a volatile spring
24 because it's the recovery of a long-term expenditure
25 over several years, which smooths out the pain?

1 A. I would agree with that. That's my
2 understanding of depreciation.

3 Q. But if you were to make hypothetically --
4 how expensive was the -- was it a steam turbine that
5 Davis had to replace a few years ago?

6 A. Steam generators.

7 Q. Were they about \$600 million?

8 A. That's the number I remember, around
9 \$600 million.

10 Q. And you would depreciate an expenditure
11 like that over 20 or 30 years, correct?

12 A. Over the life of the asset.

13 Q. But so on a yearly basis for that steam
14 generator, it would be somewhere in the range of --
15 and I don't want to use the actual numbers, but it
16 would be 20 to 30 million dollars in depreciation?

17 A. We could probably answer that when we get
18 into the confidential section.

19 Q. Okay. You would agree that it's not --
20 for purposes of the rider RRS, it's not merely the
21 depreciation that has an impact on the amount
22 customers will pay. You also have to look at the
23 return on equity, the federal income tax, as well as
24 the return of the debt, correct?

25 MR. LANG: Objection, your Honor.

1 EXAMINER ADDISON: Grounds?

2 MR. LANG: Beyond the scope of the
3 rebuttal testimony.

4 EXAMINER ADDISON: Mr. Oliker.

5 MR. OLIKER: Your Honor, he is making a
6 statement about the impact of Davis-Besse and
7 depreciation and capital expenditures, and I am
8 merely further exploring the line of questioning that
9 he's included in his own testimony.

10 MR. LANG: And, your Honor, the question
11 was about the rider which is not within his
12 testimony, his rebuttal testimony.

13 EXAMINER ADDISON: I agree. Objection
14 sustained.

15 Q. (By Mr. Oliker) On the following page of
16 your testimony, you indicate the companies' forecast
17 includes Mr. Rose's carbon prices which provides
18 additional cushion in the cost forecast to account
19 for regulatory risk that may never occur. You
20 haven't personally undertaken any evaluation of
21 carbon price, have you, Mr. Moul?

22 A. No, I haven't. I have relied on the
23 testimony and the information that's in Witness
24 Rose's work.

25 Q. Going back it's on page 3 of your

1 testimony, you are talking about where the plants are
2 in the dispatch stack. Did you look at where the
3 NYMEX Henry Hub contract traded on Friday?

4 A. No, I didn't. I mean, I have a general
5 sense of where NYMEX is trading, but I didn't look at
6 it on Friday.

7 Q. Would you agree it's currently under
8 \$2.30 per MMBtu for the following month, November?

9 A. I'm not sure about November. The numbers
10 I have seen, though, have been in the 2.30 to 2.50
11 range on NYMEX and Dominion South Point about a
12 dollar basis below that.

13 MR. OLIKER: If I could have one minute,
14 your Honor.

15 EXAMINER ADDISON: You may.

16 Q. And just to add to that, when you
17 mentioned the dollar basis, so would you agree that
18 that reduces the price of natural gas on an MMBtu
19 basis to about a \$1.30 if you assume \$2.30 is your
20 starting point?

21 A. That's approximate, yes.

22 Q. And that leads to a marginal cost of a
23 natural gas combined-cycle plant of somewhere between
24 12 to 17 dollars per megawatt-hour?

25 A. Only if you have access to spot gas with

1 no transportation delivery charges, no firm
2 transportation included in that and storage included
3 in that. Those are all cost adders that will drive
4 it up above that spot price.

5 MR. OLIKER: Okay. No more questions,
6 your Honor. Thank you.

7 EXAMINER ADDISON: Thank you, Mr. Oliker.
8 Ms. Bojko.

9 MS. BOJKO: Thank you your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Bojko:

13 Q. Good afternoon, Mr. Moul.

14 A. Good afternoon.

15 Q. Let's turn to page -- the bottom of page
16 3 onto page 4 of your testimony. Here you discuss
17 "the proposed transaction will not deliver the
18 promised benefits to customers." Do you see that?

19 A. I think what I am doing is rebutting the
20 point that Mr. Comings made that it would not provide
21 the benefit to the customers.

22 Q. Okay. And isn't it true that the
23 proposed benefits you reference in the question are
24 delivered to customers through rider RRS?

25 MR. LANG: Objection, your Honor.

1 EXAMINER ADDISON: Grounds?

2 MR. LANG: The discussion that's in
3 that where the text that's in that question is a
4 question, it should technically be treated as a
5 question from counsel. That's why at the beginning
6 of this process I asked -- I say, "If you are asked
7 the same questions, would you give the same answers?"

8 So the question is not his, which is my
9 objection. She's suggesting that's his question.
10 Technically, it's my question, and he can be asked on
11 the answer.

12 EXAMINER ADDISON: Ms. Bojko?

13 MS. BOJKO: I'll rephrase, your Honor.

14 EXAMINER ADDISON: Thank you.

15 Q. (By Ms. Bojko) Mr. Moul, the promised
16 benefits discussed in your testimony are delivered to
17 customers through rider RRS; is that correct?

18 MR. LANG: Objection, your Honor. Again,
19 the "promised benefits" are in the question. What he
20 is discussing in the testimony is the costs of the
21 Sammis plant and the Davis-Besse plant.

22 MS. BOJKO: Your Honor, he specifically
23 says "no," so he answers the question, meaning he
24 discusses the question that's posed and he answers
25 the question that he doesn't agree that the proposed

1 transaction will not deliver the promised benefits to
2 customers.

3 MR. LANG: And, again, your Honor, FES's
4 underestimated the projected costs of the plants is
5 what Mr. Comings's testimony is, so Mr. Moul is
6 addressing that issue, not larger issues.

7 EXAMINER ADDISON: We are going to
8 sustain the objection.

9 Please keep all of the questions related
10 to Mr. Moul's answer.

11 Q. (By Ms. Bojko) Mr. Moul, do you state
12 "no," you do not deliver -- you do not agree that the
13 promised benefits to customers will not be delivered?

14 A. I state "no," that we did not
15 underestimate our costs.

16 Q. And the costs are with regard to the
17 benefits or the costs to customers; is that correct?

18 A. No, the costs are associated with
19 operating Davis-Besse and Sammis.

20 Q. And the proposed transaction includes
21 costs to customers that are offset by the revenues
22 produced of the output of those plants; is that
23 correct?

24 MR. LANG: Objection, your Honor.

25 EXAMINER ADDISON: Grounds?

1 MR. LANG: Again, beyond the scope, and,
2 I guess, cumulative and redundant to the first 30
3 days of questioning in this hearing about what rider
4 RRS does, starting on August 31 with Ms. Mikkelsen.
5 The costs and revenues and everything that flows
6 through and how that impacts rider RRS was covered
7 extensively in the first 30 days of cross-examination
8 of the companies' witnesses. His testimony on
9 rebuttal here is about the costs of Sammis and
10 Davis-Besse.

11 MS. BOJKO: Your Honor, he specifically
12 is talking about the proposed transaction. I
13 understand your Honor does not want me to ask
14 questions on the question, but his response to the
15 question that is posed is what I am asking questions
16 on, and he specifically responds "no," he does not
17 believe that the -- that Mr. Comings' statement that
18 the proposed transaction will not deliver the
19 promised benefits to customers, he does not agree
20 with that statement of Mr. Comings, so that is
21 directly responsive to his rebuttal testimony.

22 Then, as if I would ever be allowed to
23 continue, I will get into the costs and how those
24 costs are looked at in isolation and that the
25 proposed transaction, which is the whole point of his

1 testimony, does not just look at the costs of the
2 plants. And he makes assertions about the volatility
3 of the costs and assumes it references back to the
4 question, which is about the benefits to customers.

5 So the response all is responsive to the
6 question posed which is about the benefits to
7 customers, and I think that he put it forward like
8 this in his testimony so we should have an
9 opportunity to explore his answer of "no" to the
10 question that's posed.

11 If he wants to strike portions of his
12 testimony regarding the creation of the response that
13 alludes to the fact that he doesn't agree that the
14 proposed transaction will not deliver the promised
15 benefits to customers, then maybe we could stipulate
16 to a modification of his testimony but that's what
17 the testimony says.

18 EXAMINER ADDISON: I don't think that
19 will be necessary. I'm going to allow this question.
20 We'll provide Ms. Bojko a little leeway.

21 That's conditioned on your promise that
22 you will get to the costs here pretty soon because
23 that seems to be the bulk of his testimony.

24 MS. BOJKO: Absolutely.

25 EXAMINER ADDISON: Thank you.

1 MS. BOJKO: Thank you, your Honor.

2 MR. LANG: I am pretty sure the witness
3 will need the question read back.

4 EXAMINER ADDISON: Certainly.

5 THE WITNESS: I am not exactly sure where
6 we are at.

7 EXAMINER ADDISON: Can we have that last
8 question read back? Thank you.

9 (Record read.)

10 A. The way I think about the proposed
11 transaction is it's in a purchase power agreement
12 between FirstEnergy Solutions and the companies.
13 Then the companies take the output of the plants,
14 both energy, capacity, ancillary services and
15 environmental aspects and sells that into the
16 wholesale market, and where the wholesale market nets
17 against those costs associated with those attributes
18 is what flows through as either a cost or a revenue
19 through rider RRS.

20 Q. And so the costs that you discuss on page
21 4 of your testimony is one side of the proposed
22 transaction; is that correct?

23 MR. LANG: Objection, your Honor.

24 EXAMINER ADDISON: Grounds?

25 MR. LANG: As just discussed, the

1 proposed transaction is the proposed PPA between FES
2 and the companies. There isn't a side. I think what
3 she is trying to get to is that there are revenues
4 that occur outside of the proposed transaction, but
5 the proposed transaction is the wholesale power
6 purchase agreement, which is just FES selling output
7 to the companies. So I would object that the
8 question mischaracterizes what's before the
9 Commission and it's ambiguous.

10 EXAMINER ADDISON: Ms. Bojko.

11 MS. BOJKO: Your Honor, if I may respond?

12 Thank you.

13 I mean, the term sheet here has both
14 sides. It has the costs going to FES and then it has
15 FE, the companies, being able to or required then to
16 sell the output of that into the wholesale market, as
17 the witness even alluded to in his response to my
18 question. So both sides are actually in the term
19 sheet. It is part of the proposed transaction and
20 that's what my question goes to.

21 MR. LANG: And, again, your Honor she has
22 mischaracterized what is before the Commission,
23 particularly in terms of talking about that the term
24 sheet specifies and obligates the companies to sell
25 the output. That's outside of the term sheet, but

1 that's a continuing objection.

2 EXAMINER ADDISON: Thank you, Mr. Lang.

3 At this point I am going to sustain the
4 objection. I think we've noted on the record many
5 times that there are revenues attributed to -- that
6 will be compared to the costs of these plants so I
7 don't think he is the appropriate witness to be
8 directing these questions to. Let's focus on the
9 costs of these plants that he has prepared testimony
10 for today.

11 MS. BOJKO: Thank you, your Honor.

12 EXAMINER ADDISON: Thank you.

13 Q. (By Ms. Bojko) Mr. Moul, on lines 8 and 9
14 of page 4, you say we do not expect the costs of
15 Sammis and Davis-Besse to be volatile over the next
16 15 years which is why rider RRS will work as a retail
17 rate stabilization mechanism. Do you see that?

18 A. Yes, I do.

19 Q. So your testimony does, in fact,
20 reference the retail rider RRS as being the retail
21 rate stabilization mechanism; is that correct?

22 A. My testimony really goes to the
23 volatility of our costs over that time frame and why
24 they will be good assets to support that retail rate
25 stabilization for customers.

1 Q. Right. And there is another side of the
2 retail rate stabilization mechanism that you
3 reference on line 9 of your testimony which is the
4 offset of the revenues; is that correct?

5 A. I don't see anything about offset of
6 revenues on line 9.

7 Q. Well, that is part of the retail rate
8 stabilization mechanism that you reference; isn't it
9 true?

10 A. I'm just talking about it in totality.
11 As a hedge for customers to have something that's not
12 volatile and in a volatile gas energy market is a
13 value.

14 Q. And the market risk that you reference on
15 line 10, that market risk is the prices of the
16 market, the volatility of energy prices in the
17 market; is that true?

18 A. If you keep on reading, the market risk
19 the companies' customers face over the next 15 years
20 comes from volatile natural gas prices which is why
21 it would not make sense for generating assets
22 supporting the rider to support gas fired.

23 Q. And the volatility of the natural gas
24 prices in the energy market; is that what you are
25 referencing there?

1 A. It's strictly the volatility of the
2 natural gas markets so let --

3 Q. In the energy market --

4 MR. LANG: If he can finish his answer,
5 please.

6 MS. BOJKO: I'm sorry. I thought he was
7 finished.

8 EXAMINER ADDISON: Thank you, Ms. Bojko.
9 You may finish your answer.

10 A. Okay. It's strictly the natural gas
11 markets which can have an impact on energy markets.

12 Q. And that's the market risk that you are
13 talking about is the energy market risk?

14 A. Yes.

15 Q. And the energy market risk comes into
16 play of -- when the companies are going to sell the
17 output of the generating units into the market; is
18 that correct?

19 A. The energy market risk comes from the
20 potential for volatility in natural gas prices on a
21 supply stack that's dominated by natural gas and,
22 therefore, energy prices follow that natural gas
23 price and that energy price is reflected towards the
24 customers of the companies.

25 Q. And the costs that you are talking about

1 for the two plants here, those costs are separate and
2 distinct from the market volatility that you are
3 talking about with regard to the natural gas plants;
4 isn't that true?

5 A. Yes, because the market volatility for
6 the natural gas plants is really tied to the
7 commodity of natural gas versus any other impact,
8 whereas, those plants you have got coal and you have
9 got nuclear commodities.

10 Q. And the costs of the plants is also
11 variable depending on the O&M costs as well as fuel
12 costs; isn't that true?

13 A. Yeah. It's true that there are
14 variables, and as I state earlier in my testimony, we
15 know that our cost assumptions are reasonably
16 conservative, and we have a lot of experience
17 operating these plants and understand what costs need
18 to be incurred.

19 Q. So even though you reference rider RRS in
20 lines 8 through 15, if I understand your testimony as
21 well as your counsel objecting to my questions, you
22 are not here to testify as to whether rider RRS is --
23 will obtain the promised benefits to customers; is
24 that correct?

25 A. That's correct. I am here to testify to

1 our costs being reasonable and why these plants as
2 coal-fired and nuclear units provide a greater hedge
3 and protection for our customers in a volatile
4 natural gas marketplace.

5 Q. And that hedge that you just referenced
6 that's also on line 13, the hedge that you are
7 discussing comes about as the difference between the
8 costs of the plants and the revenue obtained from the
9 companies selling the output into the market; is that
10 true?

11 A. I would say it's the difference between
12 the agreed upon costs between FirstEnergy Solutions
13 and the companies and then whatever the companies get
14 when they sell that into the wholesale marketplace.

15 Q. Could we turn to page 6. I want to ask
16 you a few more questions in addition to Mr. Soules
17 with regard to the term sheet. Section 10 of the
18 term sheet just deals that you reference on line 1 of
19 page 6, Section 10 of the term sheet just states the
20 delivery period of June 1, 2016, to May 31, 2031; is
21 that correct?

22 A. That's correct.

23 Q. There's no other language in that
24 provision Section 10 of the term sheet; is that
25 correct?

1 A. That's all that's there.

2 Q. And on lines 9 through 11, you are
3 referencing Section 19 which is the limitation of
4 liability language; is that correct?

5 A. That's correct.

6 Q. You still have the term sheet up there
7 with you, sir?

8 A. I do.

9 Q. Okay. If we could turn to page 10 which
10 is Section 19 of the term sheet.

11 A. Already there.

12 Q. Thank you. This section only applies if
13 a breach occurs; is that correct?

14 A. That's correct.

15 Q. And I believe you stated that damages are
16 limited to direct damages, and is it your
17 understanding that all other damages are waived?

18 A. Based on the language in the contract --
19 or, I mean, sorry, in the term sheet and my
20 experience with other contracts, yes.

21 Q. Okay. And FirstEnergy Solutions then
22 would not be liable for consequential, incidental,
23 punitive, or indirect damages; is that correct?

24 MR. LANG: Objection, your Honor. Both
25 asked and answered and Mr. Soules has already read

1 that part of the term sheet into the record and she's
2 just read it again so it's asked and answered.

3 EXAMINER ADDISON: Sustained.

4 Q. (By Ms. Bojko) Okay. FES -- I think this
5 is a different question. I am asking you if FES --
6 what FES would be responsible in the event of a
7 breach because on page 6, line 9, you said FES would
8 be responsible, and I am asking if FES would be
9 responsible, not the general term of the agreement.
10 I am asking you what FES would be responsible for.
11 So would FES -- if it does breach, would FES be
12 liable for lost profits or other interruption
13 damages?

14 A. No. And if you go to my testimony,
15 lines -- starts on line 8 regardless if FES
16 terminated the PPA early, it would be in breach, and
17 then I explain under Section 19 would be -- FES would
18 be responsible to pay the companies the difference
19 between the contract payments and the amount of
20 revenue that the companies would have received for
21 the output of the plants.

22 Q. So my question is in your hypothetical
23 that you have just reoutlined for us, in your
24 hypothetical, FirstEnergy Solutions would not be
25 liable for lost profits or other interruption

1 damages, correct?

2 A. That's correct as outlined in Section 19.

3 Q. Okay. And also similarly under your
4 hypothetical that you just outlined for us in your
5 testimony, FirstEnergy Solutions would not be
6 liability for consequential, incidental, punitive, or
7 interrupted damages; is that correct?

8 MR. LANG: Objection again. The contract
9 says that we've covered it just by saying that FES
10 isn't responsible. It's obvious this is a contract
11 with FES, so it's asked and answered and redundant
12 and repetitive.

13 EXAMINER ADDISON: Ms. Bojko.

14 MS. BOJKO: Your Honor, I actually don't
15 think Mr. Soules asked these specific questions. I
16 think he asked one question, and I don't think he
17 asked each of the different damage provisions that I
18 am asking about, so I do think it is different.

19 I also think that Mr. Soules did not put
20 it in the frame of a hypothetical of a breach which
21 is what I just did and then that's what the witness
22 just did when he referred me back to his testimony
23 that he is saying his answer is only in response to a
24 breach so that's kind of what we are talking about
25 which I think is different than what Mr. Soules

1 asked.

2 EXAMINER ADDISON: I will allow this one
3 question, and then you should probably move on.

4 MS. BOJKO: It's my last. Thank you.

5 EXAMINER ADDISON: Do you need that last
6 question?

7 THE WITNESS: Yeah. Can we have it read
8 back?

9 EXAMINER ADDISON: Thank you, Karen.

10 (Record read.)

11 MS. BOJKO: I think it was -- may I
12 rephrase my -- withdraw that question and rephrase?

13 EXAMINER ADDISON: You may. Thank you.

14 Q. Thank you. Under the hypothetical of a
15 breach referenced in your testimony, FirstEnergy
16 Solutions would not be liable for consequential,
17 incidental, punitive, exemplary or indirect damages;
18 is that correct?

19 A. That's correct.

20 Q. And if you look at line 6 of your
21 testimony, you have a footnote 7, and footnote 7 is a
22 reference to Section 20 of the term sheet; is that
23 correct?

24 A. That's correct.

25 Q. And here you are talking about

1 consummation of the transaction or lack of
2 consummation of the transaction if FirstEnergy
3 Solution learns that there has not been governmental
4 approval; is that correct?

5 A. That's correct.

6 Q. And isn't it true that this section is at
7 the sole discretion and absolute discretion of
8 FirstEnergy Solutions?

9 A. That's correct in accordance with the
10 words in Section 20.

11 Q. And isn't it true that the reasonable
12 efforts to resolve the issues are also at FirstEnergy
13 Solutions' sole discretion in this Section 20?

14 A. Yes.

15 Q. And when you say there are no exceptions
16 on line 6, you say there are no exceptions to FES's
17 15-year commitment, you are only referring to the
18 15-year delivery period; is that correct?

19 A. Yes, that's correct.

20 Q. You're not testifying to other
21 obligations contained in the term sheet; is that
22 correct?

23 A. That's correct.

24 Q. For example, you are not speaking to
25 FirstEnergy Solutions' exception or excuse for

1 nonperformance in Section 8; is that correct?

2 MR. LANG: I would object at this point
3 just to the ambiguity of the question. I don't know
4 what's being asked.

5 MS. BOJKO: Oh, I can rephrase, your
6 Honor.

7 EXAMINER ADDISON: Would you mind,
8 Ms. Bojko? Thank you.

9 Q. On line 6, you say there are no
10 exceptions to FirstEnergy's 15-year commitment; is
11 that correct?

12 A. That's correct.

13 Q. And when you made that statement, you are
14 not speaking to FirstEnergy's exception or excuse for
15 nonperformance that's in Section 8 of the term sheet;
16 is that correct?

17 A. And you are speaking of the Section 8 is
18 the unit contingent status of the agreement?

19 Q. That's correct.

20 A. Yes, that's correct.

21 Q. And you are also not referring to
22 FirstEnergy Solutions' exception to performance under
23 Section 16 of the term sheet; is that correct?

24 A. My testimony specifically references
25 Sections 10, 19, and 20 so that's what I was limiting

1 my discussion to, and Section 16 wasn't part of this
2 testimony.

3 Q. So if there are any other exceptions to
4 performance or excuse for nonperformance contained in
5 the term sheet regarding FES's performance, you are
6 not speaking to that when you say there are no
7 exceptions to FirstEnergy Solutions' commitment; is
8 that correct?

9 A. I'm saying there are no exceptions to the
10 15-year commitment associated with this agreement.

11 Q. And you are also not speaking to
12 FirstEnergy Solutions' ability to sign, transfer, or
13 sell the agreement to another party; is that correct?

14 A. That's correct.

15 Q. And I believe you stated earlier but --
16 that you don't think anything has happened since the
17 last time you testified, but it's your understanding
18 that there is still not a final contract; is that
19 correct?

20 A. Yeah. I believe I testified that this is
21 the final term sheet and that I am not aware of any
22 action that has been taken to draft a purchase power
23 agreement.

24 Q. Okay. And you wouldn't be part of the
25 drafting of that contract; is that correct?

1 A. No, I would not.

2 Q. And just so we're clear since we have
3 been talking about interpretations of the contract,
4 you are still not an attorney since you last
5 testified; is that right?

6 A. No matter how many hours I spend with
7 attorneys, I am still not one.

8 MS. BOJKO: And that's all I have. Thank
9 you, Mr. Moul.

10 Thank you, your Honor.

11 EXAMINER ADDISON: Thank you, Ms. Bojko.

12 At this time I think it would be a good
13 stopping point for lunch. Let's take our lunch break
14 and come back around 2.

15 Thank you.

16 Let's go off the record.

17 (Thereupon, at 12:50 p.m., a lunch recess
18 was taken until 2:00 p.m.)

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1 Monday Afternoon Session,
2 October 26, 2015.

3 - - -

4 EXAMINER ADDISON: Let's go back on the
5 Lord.

6 Mr. Settineri.

7 MR. SETTINERI: Thank you, your Honors.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Settineri:

11 Q. Good afternoon, Mr. Moul. Good to see
12 you again.

13 I just want to clarify what you mean by
14 avoidable costs, and you use that term in your
15 rebuttal testimony, correct?

16 A. Uh-huh.

17 Q. Would you agree with me -- would you
18 agree with me that avoidable costs are those costs
19 that would not be incurred if the plants were not
20 operated?

21 A. Yeah, that's the simple definition. I
22 think that's straight from my supplemental testimony
23 as well.

24 Q. Okay. Thank you. And in addition to
25 avoidable costs, one of the concerns I think that you

1 have for these units are the necessary capital
2 expenditures to keep the plants operating, correct?

3 A. Yes.

4 Q. And I believe you discussed previously
5 with other counsel about some retirements, but would
6 you agree with me that when retiring a unit, you
7 would review the cost of any necessary capital
8 expenditures for the unit in the future and you would
9 also evaluate whether the units are going to recover
10 their avoidable costs going forward, correct?

11 A. That's correct. Additionally, you don't
12 have to look at a long-term view. It's really a
13 decision that's a one-year snapshot when you're
14 evaluating it against the PJM criteria.

15 Q. And you also then take that snapshot and
16 then overlay it with the balance sheet of the
17 company, correct?

18 A. That's correct.

19 Q. And in this case it would be FES's
20 balance sheet we would look at, correct?

21 A. That's correct.

22 Q. Okay. And a generating unit with
23 revenues exceeding its avoidable cost has value,
24 correct?

25 A. Yes.

1 Q. Okay. And any purchaser -- or any
2 potential purchaser of the Davis-Besse or Sammis
3 units would face the same uncertainty in the energy
4 markets as FES faces today, correct?

5 A. That's correct.

6 Q. And it would also -- assuming it would
7 operate the plants as FES would, meaning it would
8 make prudent capital investments to keep the plant
9 operating, it would also face that risk of that
10 incurred capital, correct?

11 A. That's correct.

12 Q. Okay. But it's also possible that a
13 potential purchaser could have a stronger balance
14 sheet than FES, correct?

15 A. That is correct.

16 Q. Okay. If you could turn to page 2, lines
17 5 and 8 of your rebuttal testimony, please.

18 A. Page 2, lines 5 through 8?

19 Q. And that is a question.

20 A. Right.

21 Q. Which I am watching Mr. Lang here, but
22 the question states -- actually, I am going to switch
23 this. Gave you the wrong reference. It's actually
24 lines 9 to 10.

25 A. Yes.

1 Q. Ten to 11, I'm sorry. You state there,
2 "IF a purchaser does not know if the Plants will be
3 recovering their avoidable costs, FES cannot expect
4 to get proper value for the Plants." Do you see
5 that?

6 A. Yes, I do.

7 Q. Okay. Now, you have reviewed
8 Mr. Lisowski's attachments to his testimony regarding
9 his forecast for profit and losses for the plants,
10 correct?

11 A. Yes, sometime back, that's correct.

12 Q. And I know Mr. Lisowski is in the room so
13 be careful. But you don't have any reason to
14 disagree with his forecasts attached to his
15 testimony, correct?

16 A. No reason to disagree with his forecasts.

17 Q. Okay. And his forecast -- the forecasts
18 that are attached to his direct testimony in this
19 proceeding can be used to calculate the avoidable
20 costs for the units and do a comparison between
21 revenues, correct?

22 A. Yes. You could do that.

23 Q. Okay. And I am going to hold some
24 questions for the confidential session here,
25 Mr. Moul, so I may skip around a little. You are

1 also familiar with Mr. Ruberto's net present value
2 analysis on the over- and underrecovery for required
3 RRS, correct?

4 A. No.

5 Q. Okay. Are you familiar with an
6 attachment to his testimony that presented a net
7 present value for the over- and underrecovery of
8 rider RRS?

9 A. No, I have not looked at his testimony
10 attachments.

11 Q. Have you read his testimony?

12 A. I don't think I have read his testimony
13 either.

14 Q. Are you aware -- so you are not aware
15 that Mr. Ruberto predicted a net present value for
16 the over- and underrecovery of the units, meaning
17 Sammis, Davis-Besse, and OVEC, equal to \$770 million?

18 A. I have heard the \$770 million value, but
19 I just haven't read it in Mr. Ruberto's testimony.

20 Q. Okay. Who did you hear it from?

21 A. Through various discussions in
22 preparation for my testimony.

23 Q. Any reason to believe that net present
24 value number is incorrect?

25 A. No, no reason to believe that.

1 Q. Any reason to believe that it is correct?

2 A. I know where Mr. Ruberto would get that
3 value from, which would be probably from our business
4 development group, so they would have the right
5 information to generate that value.

6 Q. So would you agree with me that a
7 purchaser of the plants that intended to continue to
8 operate the plants would immediately recognize that
9 net present value of \$770 million upon purchase?

10 A. Yes.

11 Q. Going back again to your rebuttal
12 testimony, line 10, page 2 --

13 A. Okay.

14 Q. -- you say there that, "If a purchaser
15 does not know if the Plants will be recovering their
16 avoidable costs, FES cannot expect to get proper
17 value for the Plants."

18 I want to focus on the phrase "purchaser
19 does not know." Would you expect any purchaser of
20 the plants to conduct the necessary due diligence to
21 develop an estimate of avoidable costs for the units?

22 THE WITNESS: Could you read that back.
23 I had a hard time hearing what you were asking.

24 (Record read.)

25 A. Whether a purchaser would spend the time

1 and resources to do due diligence on the purchase of
2 one of these assets would, I believe, have something
3 to do with their view of uncertainty in the
4 marketplace and whether it was worth their time and
5 effort to even develop the due diligence to come up
6 with an offer.

7 Q. And as of today, though, we have that
8 information attached to Mr. Lisowski's testimony,
9 correct?

10 A. We have those projections, yes.

11 Q. Okay. And as part of a potential
12 transaction, FES could sign a nondisclosure agreement
13 with a potential purchaser and provide Mr. Lisowski's
14 forecasts, correct?

15 A. I guess while we could do that, I would
16 wonder why a potential purchaser would rely upon the
17 counterparty's values. I mean, I believe them, but I
18 am part of FirstEnergy -- well, FirstEnergy
19 Solutions, so I would think they would do their own
20 due diligence and come up with their own values.

21 Q. Okay. And by providing that information
22 to a potential purchaser, that would help improve
23 FES's position, correct, in the negotiation?

24 A. I think as part of any due diligence, you
25 would sign a nondisclosure and provide access to all

1 of the information. I think they would develop their
2 own -- their own net present value and/or value that
3 they see versus the risks that they see for any given
4 asset.

5 Q. So a potential purchaser may not rely on
6 that information, very well may not likely rely on
7 it, but it could rely on it if it wanted to, correct?

8 A. That's correct.

9 Q. Okay. Page 3, lines 1 through 17,
10 Mr. Moul, if you could turn there, please.

11 A. Okay.

12 Q. And lines -- I guess I want to focus on,
13 actually, lines 6 and 7. You state, "Sammis and
14 Davis-Besse are baseload plants with low variable
15 costs that typically dispatch low in the supply
16 stack." That's your testimony there, correct?

17 A. That's correct.

18 Q. Okay. What do you mean by "dispatch low
19 in the supply stack"?

20 A. I want to be careful not to leak into
21 confidential portions, but what I would say is their
22 variable costs are low enough that they are typically
23 at or below the marginal units on a daily basis.

24 Q. So you would agree with me that the
25 Davis-Besse and Sammis units are competitive in the

1 wholesale energy markets, correct?

2 A. That's correct.

3 Q. And you would also agree with me the
4 plants -- and when I say "plants," I mean the Sammis
5 and Davis-Besse units -- will be competitive in the
6 wholesale energy markets for the duration of rider
7 RRS, correct?

8 A. I would agree that over the long term
9 that I would expect them to be competitive, and as I
10 said, the only uncertainty -- the largest uncertainty
11 is in that near-term energy prices and whether that
12 would allow us to continue to make those necessary
13 investments to continue to maintain them as reliable
14 as we would like.

15 Q. And when you talk about maintaining
16 reliability, then that correlates to being able to
17 dispatch those units when called upon, correct?

18 A. Mostly in the forced outage rates more
19 than anything and, of course, if you are in a forced
20 outage, you can't dispatch.

21 Q. If you could turn to page 5, lines 9
22 through 11 of your rebuttal testimony, the question
23 there uses the phrase "eliminate cost recovery
24 shortfalls," and you give an answer to the question.
25 What I would like to know is your understanding of

1 the phrase -- let's focus on "cost recovery," that
2 that cost recovery relates to capacity revenues.

3 A. Well, specifically when you look at the
4 question in the beginning it calls out the PJM
5 capacity performance proposal, and when I talk
6 about -- well, as I understand the question, it's --
7 it's inferring that Dr. Kalt testifies that the
8 capacity performance proposal is enough to eliminate
9 any cost recovery shortfalls. I look at that
10 holistically as the entire energy market, energy
11 capacity, that it would eliminate the risk for these
12 plants.

13 Q. Do you have a copy of Dr. Kalt's
14 supplemental testimony before you by chance?

15 A. No, I do not.

16 Q. You'll see the reference to footnote 4
17 there is a reference to "Kalt Supplemental at 21-22."
18 Do you see that?

19 A. Yes, I do.

20 Q. Okay. Is that a footnote you put in the
21 document?

22 A. It's a footnote that was added, yes.

23 MR. SETTINERI: If I may approach, your
24 Honor?

25 EXAMINER ADDISON: You may.

1 Q. I would like to know, Mr. Moul -- I am
2 going to hand you a copy of Dr. Kalt's supplemental
3 testimony. I would like to know what line numbers
4 you believe footnote 4 is referencing specifically.

5 A. So the lines that I would say are being
6 referred to, it starts on 18, "Moreover, in response
7 to the unusually cold polar vortex," and it finishes
8 on page 22 at line 2.

9 Q. Thank you very much. Now, and keeping
10 that document in front of you, that sentence doesn't
11 mention elimination of cost recovery shortfalls, does
12 it? When I say "sentence," that's the lines that I
13 just read out of the supplemental testimony, correct?

14 A. But it talks about that it procures these
15 additional generation resources will be sufficient --
16 ensures that they will be sufficiently compensated
17 throughout the year, so that's what I inferred from
18 that.

19 Q. Thank you. To page 2 of your testimony,
20 please.

21 A. Okay.

22 Q. And you list a number of retirements
23 there at page 2, I believe. Let's see, it's lines 17
24 through 23, correct?

25 A. That's correct.

1 Q. Okay. Do you know if any of those units
2 prior to retirement were on a PJM reliability
3 must-run arrangement?

4 A. Yes, there were some.

5 Q. And which ones -- let's just go through
6 them and see if that helps refresh. Alright, was
7 that a PJM RMR arrangement?

8 A. Why don't I just tell you the ones that I
9 know that were.

10 Q. I appreciate that. Go for it.

11 A. Eastlake Units 1, 2, and 3; we also had
12 Ashtabula and Lakeshore.

13 Q. Any other units on that page under RMRs?

14 A. No.

15 Q. And how long was the Eastlake RMR
16 arrangement in place?

17 A. For Units 1 through 3, as you can see
18 essentially from the dates, there were a couple of
19 Eastlake units that retired in 2012. Those were not
20 on the RMR construct, but from 2012 until 2015 that's
21 when Eastlake, Ashtabula, and Lakeshore were -- well,
22 hang on. That's when Ashtabula was released from the
23 RMR status. Eastlake and Lakeshore were released
24 from the RMR status in September of 2014. And based
25 on energy prices in the winter and our ability to get

1 inexpensive coal to them, we chose to run them as
2 competitive units until their April, 2015, shutdown
3 date.

4 Q. Let me ask you a question. I know one of
5 the concerns in the short-term is the available --
6 getting enough money to pay for the necessary capital
7 expenditures, correct?

8 A. Correct.

9 Q. Are you familiar with an LLC generally?
10 Let me strike that.

11 If I said the phrase "LLC" to you, would
12 you know what it refers to?

13 A. I know it's a limited liability company.
14 It would typically be something that would spin off
15 of a corporation. Beyond that, I'm not one of the
16 restructuring or mergers and acquisition guys.

17 Q. We are going to try to make you one
18 today.

19 A. Okay. Great.

20 Q. Let me ask you this. Isn't it possible
21 that FES could spin off the Sammis and the
22 Davis-Besse assets into an LLC, separate LLC, and
23 then also seek an equity partner to come in as a
24 member of that LLC to provide the necessary capital
25 funding?

1 A. So I know others in the industry have
2 done that, PP&L with their venture with another
3 entity and Talen, which I don't necessarily see they
4 are all that successful right now in the market, as
5 well so I don't necessarily see that as a viable
6 alternative for the situation we're in.

7 Q. Okay.

8 A. Additionally, there are balance sheet
9 concerns that -- that may impact as well.

10 Q. In that scenario, though, if you have an
11 equity partner coming in and the equity partner is
12 bringing in the cash, FES comes into the LLC as well,
13 it brings the experience and knows how to run these
14 units and knows how to dispatch the units, correct?

15 A. Well, yeah, absolutely. We have the
16 operating and dispatching experience.

17 Q. So that could be a good partnership,
18 couldn't it?

19 A. While that could be a good partnership,
20 that proposal would eliminate the value these plants
21 could provide to customers as a hedge against future
22 volatility, so customers of the companies would be on
23 the outside looking in.

24 Q. And you're not aware -- no customers
25 asked for the hedge, correct?

1 A. I have not been approached by a customer
2 asking for the hedge.

3 MR. SETTINERI: My remaining questions
4 are for the confidential session, your Honors.

5 Thank you, Mr. Moul.

6 THE WITNESS: You're welcome.

7 EXAMINER ADDISON: Thank you.

8 Mr. Hays?

9 MR. HAYS: I do have a few. Are we okay
10 if I only go 5 minutes? I know it is kind of an
11 awkward angle.

12 THE WITNESS: We're good.

13 MR. SETTINERI: Do you want to trade?

14 MR. HAYS: I was waiting to see if it was
15 good for the witness.

16 MR. LANG: Your Honors, could Mr. Hays
17 use the microphone?

18 MR. HAYS: That I could do.

19 THE WITNESS: That will help.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Hays:

23 Q. Mr. Moul, my name is Tom Hays. I don't
24 think I have asked any questions before. If I did,
25 they were probably very small. Nice to meet you.

1 A. Nice to meet you, too.

2 Q. I would ask if you could go back to page
3 2 of your rebuttal testimony.

4 A. Okay.

5 Q. I have some preliminary questions, but I
6 had a few questions to ask about this page. Would
7 you agree that there is overcapacity in the electric
8 generation for the PJM market today?

9 A. That's -- that's kind of a broad
10 question. If you look just at megawatts, I would say
11 that PJM is meeting their needs. I would say there
12 are varying degrees of quality of the megawatts that
13 are meeting those needs so -- so it's hard to say yes
14 or no to that.

15 Q. Okay. Would you agree that there was
16 overcapacity on electric generation in the PJM market
17 in 2012?

18 A. I really don't know.

19 Q. Now, in the 2012 market, though, that
20 would have included all of the plants that you have
21 on page 2, they would have been present in the market
22 at that time?

23 A. Up until September of 2012.

24 Q. Right. And there were other -- there
25 weren't just FirstEnergy coal plants that closed

1 during the years 2012 to today because of the Mercury
2 and Air Toxics rule; am I correct?

3 A. You're correct.

4 Q. Do you know the approximate amount of
5 megawattage that closed?

6 A. I don't know a number off the top of my
7 head.

8 Q. How about just for these 27 units, do you
9 have an approximate number for how many megawatts
10 retired?

11 A. I think that was in some of my earlier
12 testimony. I don't remember the number. Yeah, I
13 don't recall right now.

14 Q. On page 2 at line 11, you say, "FES
15 cannot expect to get proper value for the Plants."
16 Do you see that?

17 A. Yes.

18 Q. If these -- if this next question takes
19 us into confidential, you can just let me know.

20 A. Okay.

21 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

Q. Okay. Similarly, what is the proper value for the Davis-Besse plant?

A. Once again, I would go to my book value as a starting point. I don't know that one off the top of my head.

Q. Do you know if FirstEnergy has ever purchased any plant or company for less than its book value?

A. I don't know.

Q. Do you know if any power plants have been -- let's say in the last three years, if any power plants have been sold for less than their book value?

A. I don't know.

1 Q. I believe earlier you mentioned a \$1
2 million that FES received for -- and I wasn't clear
3 on this, but FES received a \$1 million offer for
4 some -- some of the units or plants on your list at
5 the bottom of page 2 of the 27 units of 12 different
6 plants?

7 A. Yes.

8 Q. How many units were involved?

9 A. The units that were involved were the
10 Hatfield site.

11 Q. And I am not familiar with Hatfield, so
12 how many units?

13 A. Three units.

14 Q. And how many megawatts in capacity would
15 that be?

16 A. It's approximately 1,700 megawatts.

17 Q. Where is Hatfield?

18 A. It's in Pennsylvania. I don't know the
19 exact town.

20 Q. Eastern Pennsylvania, western?

21 A. Western, I think it's close to West
22 Virginia.

23 Q. Okay. Would you agree with me that if
24 FES had accepted the offer that the buyer by running
25 the plants would have kept the capacity in the PJM

1 market?

2 A. Well, in your hypothetical situation,
3 you're assuming that FirstEnergy Solutions would be
4 willing to take a full write-off minus a million
5 dollars for these plants and sell them to a
6 counterparty when there are values in those plants on
7 a -- on a salvage value, potentially, spare-parts
8 value, or use of the property for further
9 development. So your hypothetical is incorrect in
10 that we couldn't sell the plants for a million
11 dollars. I know that for a fact. We didn't do it.

12 Q. Okay. Let me ask you to assume that
13 FirstEnergy had sold the plants for a reasonable
14 offer. Would the plants' capacity have remained with
15 a new purchaser in competition with FirstEnergy
16 Solutions?

17 A. Again, it's a large assumption in your
18 hypothetical making that assumption. I would also
19 have to say I don't know what the new purchaser would
20 have done with that plant site. One could assume
21 that they would have been willing to spend a quarter
22 of a billion dollars to put clean air equipment on
23 it, but I don't know that for a fact.

24 Q. Well, let's assume they decided because
25 they are the purchaser and they have their own

1 balance sheet and own business interests. Let's
2 assume they did that. If those plants had stayed in
3 operation, they would have been in competition with
4 FirstEnergy Solutions, wouldn't they?

5 MR. LANG: Objection. At this point,
6 your Honor, understanding it's a hypothetical, there
7 are several layers of speculation involved here, and
8 at this point he is asking Mr. Moul to speculate as
9 to what a purchaser would do.

10 Mr. Moul has already said he can't
11 speculate as to what the purchaser would do, so I
12 would suggest that it calls for speculation in trying
13 to answer the question, speculating as to what the
14 purchaser would do. He doesn't know that.

15 EXAMINER ADDISON: I am going to sustain
16 the objection.

17 MR. HAYS: Well, then, I'll try a similar
18 question, your Honor, because it actually was until
19 the witness added in all the layers of complexity, it
20 was a simple question.

21 Q. (By Mr. Hays) Do you believe that the
22 purchaser who made an offer intended to close the
23 facility, or do you believe that the purchaser who
24 made the offer would have intended to run the
25 facility?

1 A. I really don't know what the purchaser
2 offering such a low value intended to do. At a
3 million dollars you could get more scrap value out of
4 that plant and not have the challenges of
5 \$250 million of investment, so for all I know, they
6 could have been buying it for scrap value.

7 Q. Was the person who made the offer a scrap
8 dealer or somebody who salvages plants, or was it an
9 electric company?

10 A. I am not allowed to talk about under a
11 nondisclosure agreement who the counterparty was.

12 Q. Under this nondisclosure agreement were
13 you allowed to tell the public at large in an open
14 session that you received a \$1 million bid?

15 A. What I have said today is permissible
16 under the nondisclosure agreement.

17 Q. Wasn't it an electric company?

18 MR. LANG: Objection, asked and answered.

19 EXAMINER ADDISON: Sustained.

20 MR. HAYS: Actually, he didn't answer it,
21 your Honor, and so I would say that that objection
22 was spurious.

23 EXAMINER ADDISON: I am not going to
24 allow the question regardless, so thank you.

25 MR. HAYS: I've moved on, your Honor.

1 EXAMINER ADDISON: Thank you.

2 Q. (By Mr. Hays) Did the 27 units you list
3 on page 2 all close because of the Mercury and Air
4 Toxic rule?

5 A. I think I've answered this once before,
6 but Mercury Air Toxic Standards led to a requirement
7 for capital investment. That, combined with the
8 outlook of energy market prices and the balance sheet
9 situation at FirstEnergy Solutions, caused a decision
10 to retire these units.

11 Q. And were the energy prices in part caused
12 by overcapacity in the market at that time?

13 A. I would say there are a lot of factors
14 that impact the energy market prices, not necessarily
15 overcapacity. You've got the distortions of
16 production tax credits putting negative pressure on
17 wholesale electric prices. That could be another
18 aspect of it as well.

19 Q. Was overcapacity one of the factors in
20 the electric price markets at that time?

21 A. I don't know.

22 Q. Is it your testimony that neither Sammis
23 nor Davis-Besse face closure because of any
24 environmental rule currently existing or pending?

25 THE WITNESS: Could you read that

1 question back again.

2 (Record read.)

3 A. If you go to page 4, lines 5 through 7 of
4 my testimony, it says, "The actual costs of the
5 Plants are expected to be similar or lower than the
6 forecasted costs, with environmental regulations not
7 having a material effect." So that's my statement
8 with respect to the impacts of environmental
9 regulations on plants.

10 Q. So it would be fair to say neither Sammis
11 nor Davis-Besse face the environmental situation that
12 the units on page 2 faced?

13 A. No, because Davis-Besse is a nuclear unit
14 so it's not faced with any Mercury Air Toxic or
15 carbon requirements, and Sammis is air toxic mercury
16 compliant right now.

17 Q. So when you said "no" there, you really
18 meant yes, they are different circumstances?

19 A. Correct.

20 MR. HAYS: Thank you.

21 No further questions. Thank you, your
22 Honors.

23 EXAMINER ADDISON: Thank you, Mr. Hays.

24 MR. LANG: Your Honor, could we go off
25 the record for one second? I want -- there might

1 have been a confidentiality issue in the examination.

2 I want to confirm whether it is an issue.

3 EXAMINER ADDISON: Certainly. Let's go
4 off the record.

5 (Discussion off the record.)

6 EXAMINER ADDISON: Let's go back on the
7 record.

8 Mr. Lang.

9 MR. LANG: Thank you, your Honor. And
10 there was an exchange between Mr. Hays and Mr. Moul
11 where a specific net book value of the Sammis plant
12 was identified and the companies ask that that number
13 be maintained as confidential and moved to the
14 confidential transcript.

15 EXAMINER ADDISON: Thank you.

16 MR. LANG: And we will identify later the
17 specific pages as to where that is.

18 EXAMINER ADDISON: Thank you very much,
19 Mr. Lang.

20 Mr. McNamee.

21 MR. McNAMEE: Thank you.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. McNamee:

25 Q. Good afternoon, Mr. Moul.

1 A. Good afternoon.

2 Q. Earlier in your cross-examination you
3 indicated that Sammis burns, I think you said, a
4 little Powder River Basin coal.

5 A. Yeah a, small amount.

6 Q. It a scrub plant, right?

7 A. Uh-huh.

8 Q. Why does it burn any?

9 A. There are times during the summer peaks
10 when -- when they need to help meet some of their --
11 their requirements for clean air regulations, but
12 other than that, it's a very small amount.

13 Q. Okay. Let's see. Oh, yes. Also earlier
14 in your cross-examination you were discussing outage
15 rates and you used the term "EFOR."

16 A. Equivalent forced outage rate.

17 Q. Can you explain that for me?

18 A. At the highest level it's forced outage
19 rate by the plants when called upon during --
20 typically during the peak summertime periods.

21 Q. Okay. Let's look at the very popular
22 page 2 of your testimony.

23 A. Very well.

24 Q. Your supplemental testimony, line 13, you
25 refer to "control of the site for future

1 development."

2 A. That's correct.

3 Q. I am assuming that you -- you are
4 referring to future development as a power plant?

5 A. Potentially as a power plant or any other
6 uses for the -- for the property that it might be
7 permitted for.

8 Q. Okay. But I would assume that Solutions'
9 concern would be for development as a power plant; is
10 that right?

11 A. That's one area that would be considered.

12 Q. Okay. Sliding down to line 15 on page 2,
13 you make reference to a plant being prematurely
14 retired.

15 A. Uh-huh.

16 Q. Do you see that?

17 A. Yeah.

18 Q. Is it possible to have a retirement
19 that's not premature?

20 A. Yeah, absolutely. If you reach some
21 operational limit in the plant where -- where it
22 doesn't make sense to add capital expenditures for
23 that plant in and of itself and it's less expensive
24 to maybe build a new plant.

25 Q. But isn't it the same analysis that you

1 do in any event?

2 A. The way I look at it is operationally
3 when I -- when I can make an incremental investment
4 less than building a new plant, then I'm looking at a
5 plant that might be prematurely retiring. It doesn't
6 mean it changes your retirement decision based on
7 that incremental capital expenditure versus the
8 market revenues you have.

9 Q. Okay. I guess it's difficult for me to
10 understand how -- let me just ask you straight up.
11 How is a premature retirement decision different than
12 any other retirement decision that the company would
13 make.

14 A. They are all retirement decisions in the
15 end, right? The difference is what's the asset that
16 you are retiring and does it still have operational
17 life. That's kind of how I define premature
18 retirements. If it's got operational life, if it's
19 for -- if incremental capital investment is cheaper
20 than a new plant, if it could stay in the marketplace
21 and still be efficient in its dispatch in the
22 marketplace, then I would consider it a premature
23 retirement.

24 Q. Okay. When you say "operational life,"
25 what do you mean by operational life?

1 A. Just running the plant as a plant
2 operator from the engineering work and from the
3 ability for the plant to continue to perform.

4 Q. Okay. So this isn't the -- this isn't
5 related to, like, the accounting life --

6 A. No, no.

7 MR. McNAMEE: Okay. All right. That's
8 fine. Thank you. That's all I have.

9 EXAMINER ADDISON: Thank you.

10 At this point we will go ahead and move
11 into the confidential portion of our transcript.

12 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER ADDISON: Mr. Lang, any redirect for the public?

MR. LANG: No, your Honor.

EXAMINER ADDISON: Thank you.

Mr. Moul, thank you very much. You are excused.

THE WITNESS: Thank you.

MR. LANG: And, your Honors, at this time we move Company Exhibits 141 and 142C.

EXAMINER ADDISON: Are there any objections?

Hearing none they will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER ADDISON: Let's go off the record.

1 (Discussion off the record.)

2 EXAMINER PRICE: Let's go back on the
3 record.

4 Mr. Kutik, you may call your next
5 witness.

6 MR. KUTIK: Your Honor, we call as our
7 next witness Jason Lisowski.

8 (Witness sworn.)

9 EXAMINER PRICE: Please state your name
10 and business address again for the record.

11 THE WITNESS: Sure. Jason Lisowski, 341
12 White Pond Drive, Akron, Ohio 44320.

13 EXAMINER PRICE: Please proceed,
14 Mr. Kutik.

15 MR. KUTIK: Your Honor, we ask to have
16 marked at this time as Company Exhibit 143, the
17 public version of the rebuttal testimony of Donald
18 Moul -- excuse me, of Jason Lisowski.

19 EXAMINER PRICE: It will be so marked.

20 MR. KUTIK: And we ask that the
21 confidential version be marked as Exhibit 144C.

22 EXAMINER PRICE: That will also be so
23 marked.

24 (EXHIBITS MARKED FOR IDENTIFICATION.)

25 MR. KUTIK: May I proceed, your Honor?

1 EXAMINER PRICE: You may.

2 - - -

3 JASON LISOWSKI

4 being first duly sworn, as prescribed by law, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Kutik:

8 Q. Mr. Lisowski, do you have before you
9 what's been marked for identification as company
10 Exhibit 143?

11 A. I do.

12 Q. What is that, please?

13 A. That is the public version of my rebuttal
14 testimony.

15 Q. And the document that's been marked as
16 144 Confidential or C, do you have that before you?

17 A. I do.

18 Q. What is that?

19 A. That is the confidential version of my
20 rebuttal testimony.

21 Q. Do you have any additions or corrections
22 to make to your testimony?

23 A. I do.

24 Q. What corrections or additions do you have
25 to make?

1 A. On page 2 of both the public and
2 confidential, line 19, the change is to the word
3 "future" in that line, so, again, page 2, line 19,
4 delete the word future.

5 Q. Do you have any other additions or
6 corrections?

7 A. I do not.

8 Q. With that correction, if I asked you the
9 questions that appear in those exhibits, would your
10 answers be the same?

11 A. Yes, they would.

12 MR. KUTIK: No further questions.

13 EXAMINER PRICE: Thank you.

14 MS. WILLIS: Your Honor, might this be an
15 appropriate time to hear a motion to strike?

16 EXAMINER PRICE: It is.

17 MS. WILLIS: Thank you. Thank you, your
18 Honor. We would move to strike -- we have several
19 beginning on page 3, lines 17 through 21, carrying
20 over to page 4 through line 1 through 12. And the
21 basis for this motion to strike is that this is
22 cumulative testimony. It was already covered. In
23 fact, you can see by the footnotes Mr. Moul covered
24 the -- it in his supplemental, and Mr. Lisowski had
25 already included this in his JYL-7.

1 Additionally, we believe that it's
2 improper rebuttal because it is information that
3 certainly could have been provided earlier and was
4 not. It's really more direct case and not
5 specifically to rebut something that has come up
6 later on in the case.

7 The next motion to strike would be page
8 5, beginning on line --

9 EXAMINER PRICE: One second. How many do
10 you have, motions?

11 MS. WILLIS: Just two, your Honor.

12 EXAMINER PRICE: Okay, go ahead.

13 MS. WILLIS: The next motion to strike
14 would begin on page 5, beginning on lines 21, with
15 the sentence, "In 2010 FES changed the operations,"
16 and then the motion to strike would go all the way
17 through the bottom of page 7.

18 And, again, it is very similar grounds,
19 your Honor, that this is information that was already
20 presented. It's cumulative and it is improper
21 rebuttal, could have been provided much earlier. In
22 fact, much of it was and really is not -- is more
23 direct, the companies' direct case versus a rebuttal
24 to particular intervenor testimony or
25 cross-examination.

1 EXAMINER PRICE: Thank you.

2 Mr. Kutik.

3 MR. KUTIK: Your Honor, as was the case
4 with Mr. Moul, this information provides additional
5 detail with respect to particular subjects,
6 particularly in response to rebuttal -- the
7 intervenors' testimony, so in that regard, your
8 Honor, it is proper rebuttal.

9 EXAMINER PRICE: Anybody else care to
10 speak to this motion?

11 MS. BOJKO: Your Honor, OMAEG would join
12 the motion. I think that much of the testimony on
13 pages 5 through 7, particularly, are cumulative. It
14 talks about MISO, which is -- there is a question of
15 relevancy with some of the information as well.

16 MR. KUTIK: Your Honor, may I speak to
17 the relevancy issue?

18 EXAMINER PRICE: You may.

19 MR. KUTIK: Your Honor, this directly
20 goes to the fundamental disagreement that
21 Mr. Lisowski has with Mr. Kalt. Mr. Kalt, in our
22 view, has an academic perspective as to what a
23 retirement decision would be and what Mr. Lisowski
24 goes through is the actual decision that
25 decision-makers do make in terms of looking at cash

1 flow and providing specific examples of how, under
2 Mr. Kalt's test, potentially, the plants would not be
3 retired when, in fact, they were.

4 EXAMINER PRICE: Thank you. The motion
5 will be denied.

6 MR. KUTIK: And that's both motions?

7 EXAMINER PRICE: Both motions.

8 MR. OLIKER: Your Honor, I also have a
9 motion to strike, if I might.

10 EXAMINER PRICE: You may.

11 MR. OLIKER: I would turn your attention
12 to page 8, and this is what additional support FES
13 received. It's under that Q and A. There are two
14 footnotes and the sentences attached to those
15 footnotes that requires SEC Form 10-K in both
16 footnotes.

17 The companies moved to strike Mr. White's
18 reliance on the SE filing of FirstEnergy so if that
19 information was stricken, so should this.

20 Normally I would be fine, but for sake of
21 consistency, that's why I moved it.

22 EXAMINER PRICE: Fair enough.

23 Mr. Kutik.

24 MR. KUTIK: Your Honor, this is
25 information that's directly in this witness's

1 knowledge so it's hardly hearsay. He is the
2 assistant controller of FES.

3 EXAMINER PRICE: I'm thinking it through.
4 The wheels turn slowly sometimes.

5 MR. OLIKER: If he can provide the
6 information without the SEC references, then I'm okay
7 because it is within his personal knowledge. But
8 the SEC statements, they should not be allowed to
9 stand.

10 MR. KUTIK: Again, your Honor, this is a
11 document that the witness actually worked on.

12 EXAMINER PRICE: In all fairness to
13 consistency, we want to go back and review the
14 circumstances of the motion with respect to
15 Mr. White, so we are going to defer ruling on
16 Mr. Oliker's motion to strike at this time.

17 MR. OLIKER: Thank you, your Honor.

18 EXAMINER PRICE: Anything else?

19 Mr. Settineri.

20 MR. SETTINERI: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Settineri:

24 Q. Good after, Mr. Lisowski. How are you
25 today, sir?

1 A. Good afternoon. Very well, thank you.

2 Q. Good. Let me just start out with page 2,
3 line 17 of your testimony. You reference the term
4 "Plants" there. Am I correct that -- when you refer
5 to the term "Plants" in your testimony, you are
6 referring to the Davis-Besse, the Sammis units, and
7 FES's entitlement to the OVEC units?

8 A. Yes.

9 Q. And you made a deletion to your testimony
10 on page 2, line 19. You deleted the word "future,"
11 correct?

12 A. That's correct.

13 Q. Why did you delete that word?

14 MR. KUTIK: I'll object, your Honor, as
15 to relevancy. It is not his testimony.

16 EXAMINER PRICE: Mr. Settineri.

17 MR. SETTINERI: His prefiled testimony is
18 on the docket, your Honor. We have a corrected
19 version in front of us, and it seems to be a fair
20 question to ask.

21 EXAMINER PRICE: I don't know. I'm
22 wracking my brain in the past if we have let people
23 go through corrections on cross, but we'll allow this
24 one just once.

25 You can answer if you know.

1 THE WITNESS: Can I have the question
2 read back, please.

3 EXAMINER PRICE: You may.

4 MR. SETTINERI: And, your Honor, what I
5 will do at this time, just to move along, I will
6 withdraw the question.

7 EXAMINER PRICE: Great.

8 You won the ruling. Okay. That's fine.

9 Q. (By Mr. Settineri) Page 2, line 21, to
10 page 3, line 2, you list a number of items that you
11 believe, I think you say, Dr. Kalt leaves out of his
12 discussions; is that correct? And I am paraphrasing
13 your testimony, clearly.

14 A. Yes, I would agree with that.

15 Q. Now, equity return, that's not an
16 expense, correct?

17 A. While it's not an expense that you would
18 see on the income statement, it is a cost that is
19 associated with making a type of investment in any
20 type of an asset such as a power plant.

21 Q. Equity return is not an expenditure,
22 correct?

23 A. Again, it's not an expenditure you would
24 see on the income statement, per se. It is
25 absolutely a cost or something that a plant owner

1 would receive or would expect to receive by making
2 some type of an investment in that asset or that
3 power plant.

4 Q. Right. That's what I am getting at. You
5 make a capital expenditure of \$50 million for a piece
6 of equipment, you would expect that piece of
7 equipment to help boost your bottom line, correct?
8 And that could also be called -- stop there. Just
9 stop with that question.

10 A. Yes, if I was making a \$50 million
11 investment, I would expect to receive a return of and
12 on that investment.

13 Q. Now, without going into any numbers in
14 your direct testimony, you have a series of
15 attachments, and those attachments are designated as
16 JJL-4, 5, 6, and 7, correct?

17 A. I believe you said direct testimony. Did
18 you mean rebuttal testimony?

19 Q. Thank you for clarifying. To your
20 rebuttal testimony.

21 A. Yes, my rebuttal testimony includes JJL-4
22 through 7.

23 Q. And in that there is a reference to
24 capital expenditures on one row. And, again, without
25 getting into any numbers, but the capital expenditure

1 amounts that are listed in that attachment are actual
2 capital expenditures by the designated plant,
3 correct?

4 EXAMINER PRICE: Which attachment are you
5 referring to?

6 MR. SETTINERI: Sure. Let's start with
7 JJL-4, your Honor. Thank you.

8 THE WITNESS: I'm sorry. Could I have
9 that question read back, please.

10 Q. (By Mr. Settineri) I can just ask it
11 again. On Attachment JJL-4 there is a reference to
12 "Capital Expenditure." Do you see that reference?

13 A. Yes.

14 Q. Okay. And the capital expenditure
15 amounts that are listed in Attachment JJL-4 are the
16 actual capital expenditures incurred by year for the
17 Sammis units, correct?

18 A. Yes, that's correct.

19 Q. And if I go through the rest of your
20 attachments, that would hold true for the rest of the
21 capital expenditures that are listed in the
22 attachment, correct?

23 A. Yes, that's correct.

24 Q. And you believe that the capital
25 expenditure amounts listed on Attachments JJL-4 and

1 5, which refer to the Sammis and Davis-Besse units,
2 were necessary to keep the plants operating, correct?

3 A. Yes.

4 Q. Now, if you could turn to page 4 of your
5 rebuttal testimony, line 6, please.

6 A. Okay.

7 Q. You state there that "Capital
8 expenditures impact cash flow in the period
9 incurred." Do you see that statement?

10 A. Yes.

11 Q. Okay. Now, in that statement it implies
12 that your -- well, strike that.

13 Capital expenditures can be paid from
14 cash flows, correct?

15 A. Yes. That would be one way if you are
16 saying, like, the cash generated from operations, I
17 would agree with that. It is one potential way.

18 Q. And there are other ways to pay for
19 capital expenditures, correct?

20 A. Yes.

21 Q. All right. Debt financing is another way
22 to pay for a capital expenditure, correct?

23 A. Yes, that could be one way.

24 Q. And an equity investment is another way
25 to help pay for a capital expenditure, correct?

1 A. Yes. I would agree with that.

2 Q. And cash reserves can be used to pay for
3 a capital expenditure, correct?

4 A. Yes.

5 Q. And on page 8 of your rebuttal testimony,
6 you mention an equity infusion by FirstEnergy Corp.,
7 correct?

8 A. Actually two -- two equity infusions are
9 listed there.

10 Q. Okay. And you consider that equity
11 infusion to be a form of equity investment in FES,
12 correct?

13 MR. KUTIK: May I have the question read,
14 please.

15 EXAMINER PRICE: Let's have the question
16 back, please.

17 (Record read.)

18 A. Yes, I would agree with that.

19 Q. And you'd agree with me also that FES has
20 engaged in these forms of different methods -- ways
21 to pay for capital expenditures in the past, correct?

22 A. Yes, I would agree with that.

23 Q. And you don't know whether FES could seek
24 financing for capital expenditures for the Sammis and
25 Davis-Besse units by using those plants as

1 collateral, correct?

2 A. While I don't work in the treasury
3 department that are involved with negotiation of debt
4 financing instruments, I don't believe that to be a
5 possibility here specifically for the reasons that
6 FES has had to shut down other power plants.

7 EXAMINER PRICE: Could you repeat your
8 answer? I am not sure if I am following it.

9 THE WITNESS: Sure. If FES had the
10 ability to go and borrow against the power plant,
11 I'll use the Hatfield plant as an example, why didn't
12 FES go and do that in that case instead of shutting
13 the plant down? So I don't believe that that is a
14 rational thing that FES can do. From a financial
15 perspective, I don't see that as a realistic
16 possibility for FES.

17 EXAMINER PRICE: But wasn't Hatfield
18 looking at meeting a big capital expenditure for
19 environmental compliance?

20 THE WITNESS: Yes. However, the Hatfield
21 plant did have a net present value that for the
22 future said that you should make that investment. It
23 was the short-term of low energy prices and the
24 uncertainty risk associated with that, compiled with
25 having a capital expenditure in the near term, I

1 believe Mr. Moul talked about this morning, and the
2 fact that FES didn't have a balance sheet that could
3 take on additional debt at that time.

4 So, theoretically speaking, you know, why
5 didn't we -- why didn't FES go and use Hatfield as
6 collateral to borrow against it to do that MATS
7 compliance project?

8 EXAMINER PRICE: Okay. Thank you.

9 Thank you, Mr. Settineri.

10 Q. (By Mr. Settineri) Are you familiar with
11 parental guarantees?

12 A. I've heard the term before.

13 Q. Okay. FES could seek to back any debt
14 financing with a parental guarantee from FirstEnergy
15 Corp., couldn't it?

16 A. No, I don't think that's a realistic
17 possibility at all for a couple of reasons. One is
18 if FE Corp. backs that debt, for one is that impacts
19 the financial condition of FE Corp.

20 Second is that it produces additional
21 debt on FES's balance sheet, which I discuss at
22 length in my rebuttal on why that's not possible.

23 Third is FE Corp. has already provided \$2
24 billion to FES through direct cash equity infusions.

25 Q. That's not your decision to make, though,

1 if that occurs, correct? Let me strike that.

2 It's not your decision to determine
3 whether FE Corp. issues a parental guarantee to cover
4 FES's debt that it takes on for any necessary capital
5 expenditures, correct?

6 A. While I may not be the ultimate
7 decision-maker in that kind of regard, being chiefly
8 responsible for the accounting and financial matters
9 of FES, I would expect to be involved in some of
10 those discussions at some length.

11 Q. You are not aware of anything that would
12 prohibit FE Corp. from providing a parental guarantee
13 to FES?

14 MR. KUTIK: I'll object to the extent it
15 calls for a legal conclusion.

16 EXAMINER PRICE: With the understanding
17 Mr. Lisowski is not an attorney and he is simply
18 opining on matters within his expertise, you can
19 answer the question.

20 THE WITNESS: May I have the question
21 read back, please?

22 EXAMINER PRICE: You may.

23 (Record read.)

24 A. I haven't done an analysis of all of FE
25 Corp.'s ventures and financing papers. I would need

1 to speak to an attorney. I am not aware of anything,
2 but I am not aware of anything that would allow them
3 to do it either.

4 Q. Now, turning to Figure 1 of your rebuttal
5 testimony, you list a number of units under the
6 heading "Deactivations," correct?

7 A. Yes.

8 Q. Okay. And those units that are listed
9 under "Deactivations," those units are permanently
10 shut down, correct?

11 A. Yes.

12 Q. You've also listed plants that have been
13 sold, correct, in Figure 1?

14 A. Yes.

15 Q. And you don't know if any of those sold
16 plants have been closed as of today, correct?

17 A. That's correct, I don't know.

18 Q. All right. However, the proceeds from
19 those sales were used to improve FES's balance sheet
20 through paying down its debt and borrowings, correct?

21 A. Yes.

22 Q. And if FES sold the Sammis and
23 Davis-Besse plants, it could also use those proceeds
24 to improve FES's balance sheet through paying down
25 its debt and borrowings, correct?

1 A. It depends. While any cash that FES
2 receives if it sold Sammis and Davis-Besse under a
3 hypothetical that there was a buyer out there willing
4 to pay a price for the plants, that cash would be
5 used to reduce short-term debt, so that would help
6 the balance sheet.

7 However, the costs -- I should say the
8 purchase price of that asset compared to the book
9 value of the asset would also have an impact on the
10 balance sheet, so if there was a very significant
11 loss on that sale, that could be a detriment to the
12 balance sheet as well, so that's why my answer is, it
13 depends.

14 Q. Okay. You also list the Hatfield units 1
15 and 3 as being deactivated in Figure 1, correct?

16 A. It's actually Hatfield Units 1 through 3.

17 Q. One through 3. And that reference,
18 Hatfield Units 1 through 3, refers to the Hatfield's
19 Ferry plant, correct?

20 A. Yes.

21 Q. Okay. And that plant was located in
22 Masontown, Pennsylvania, correct?

23 A. Yes.

24 Q. And that plant is permanently closed now,
25 correct?

1 A. Yes.

2 Q. Now, at page 6 of your testimony you
3 state at line 12, "Hatfield's Ferry is particularly
4 relevant to this discussion since it shares many
5 similarities with Sammis." Do you see that
6 statement?

7 A. I do.

8 Q. Now, the Hatfield's Ferry plant was
9 acquired through FirstEnergy's purchase of Allegheny
10 Energy Supply, correct?

11 A. Well, FirstEnergy acquired Allegheny
12 Energy, Inc., which had a subsidiary known as
13 Allegheny Energy Supply, which owns the Hatfield
14 plant.

15 Q. Thank you for that clarification. And
16 the date of the acquisition was approximately
17 February, 2011, with the date of closure of
18 approximately October, 2013; is that correct?

19 MR. KUTIK: May I have the question read,
20 please.

21 EXAMINER PRICE: You may.

22 (Record read.)

23 A. So I think there was kind of two
24 questions in there, but the FirstEnergy merger with
25 Allegheny was completed in February, 2011. And as

1 you can see in my rebuttal testimony on page 7, the
2 Hatfield, again it's Units 1 through 3, were
3 deactivated in October of 2013.

4 Q. And one of the reasons for the decision
5 to close the Hatfield Ferry plant was on the cost of
6 compliance with then future and current -- then
7 current and future environmental regulations,
8 correct?

9 A. Yes, that was one reason. And as I
10 mentioned just earlier, the low energy prices that
11 existed at that time put that plant at risk and the
12 position of the balance sheet at that point and being
13 able to sustain additional negative cash flow and
14 earning losses.

15 MR. SETTINERI: Your Honor, at this time
16 I move to strike everything after "yes." And I will
17 note my question was one of the reasons, not all of
18 the reasons.

19 MR. KUTIK: The question is misleading
20 and he -- and he clarified the question.

21 EXAMINER PRICE: I think if you start
22 asking multiple reasons, you have opened the door to
23 a broader answer than just simply "yes." Your motion
24 is denied.

25 MR. SETTINERI: Thank you.

1 Q. (By Mr. Settineri) And as of today, the
2 Sammis plant has incurred those costs for compliance
3 that FirstEnergy was not willing to invest in the
4 Hatfield Ferry plant, correct?

5 A. Well, sitting here today, FES has spent
6 the necessary capital expenditures for the MATS
7 compliance. There does not exist the other two
8 reasons of a balance sheet that's able to sustain
9 negative cash flow and earnings losses and the
10 certainty that the revenues in the near term are
11 going to exceed the costs associated with running the
12 Sammis and Davis-Besse plants.

13 MR. SETTINERI: Objection. Your Honor, I
14 would again move to strike everything after "there
15 does not exist."

16 MR. KUTIK: May I have the question read
17 and the answer read, your Honor?

18 EXAMINER PRICE: You may.

19 (Record read.)

20 MR. KUTIK: Again, your Honor, it's a
21 misleading question. You only had half the fact so
22 he is providing the other facts necessary.

23 EXAMINER PRICE: I disagree. We will
24 grant that motion to strike. If you would like to
25 elicit those other facts, you will have an

1 opportunity on redirect.

2 Q. (By Mr. Settineri) And, in fact, your
3 answer in your deposition to that question last
4 Friday was affirmatively yes, correct?

5 MR. KUTIK: Well, your Honor, you have
6 now stricken his answer, so his answer is now
7 consistent with whatever he said in his deposition.

8 EXAMINER PRICE: I am going to sustain
9 the objection. I think --

10 MR. SETTINERI: Thank you, your Honor.
11 I'll move along.

12 Q. (By Mr. Settineri) All right. Page 5,
13 lines 13 to 15 of your testimony, Mr. Lisowski,
14 please.

15 A. I'm sorry. What page again?

16 Q. Sure. It's page 5, lines 13 to 15.

17 A. Okay.

18 Q. There you state, "Based on a weak balance
19 sheet caused by historical losses, and near-term
20 forecasts of the plants, FES has identified these
21 plants to be financially at-risk of closure prior to
22 their useful lives."

23 Let me ask you a question. You don't
24 disagree with Mr. Ruberto's net present value
25 calculation of 770 million in his testimony, correct?

1 A. That's correct.

2 Q. And you have no reason to disagree with
3 Mr. Rose's pricing forecasts, correct?

4 A. That's correct.

5 Q. And I assume you support your own cost
6 forecast for the plants, correct?

7 A. Correct.

8 Q. And you don't have any reason to disagree
9 with Mr. Stahl's cost of capital analysis, correct?

10 A. Correct.

11 Q. So it's fair to say you believe the
12 plants are economically viable in the long term,
13 correct?

14 A. Yes, in the long term. I agree it's the
15 near term that's putting these plants at risk.

16 Q. And you also believe that the Sammis and
17 Davis-Besse units are competitive in the energy
18 wholesale units, correct?

19 A. Yes.

20 Q. And you also believe that the Sammis and
21 Davis-Besse units are competitive in the capacity
22 markets, correct?

23 A. Yes.

24 Q. And your concerns for the plants, as you
25 indicate, is in the short-term, correct?

1 A. Yes.

2 Q. And one concern you have for the plants
3 in the short-term is that cash flow will not be
4 sufficient to support the necessary capital
5 investments that need to be made in the short-term,
6 correct?

7 MR. KUTIK: May I have the question read,
8 please.

9 EXAMINER PRICE: You may.

10 (Record read.)

11 A. That's correct. That's one reason, and
12 another reason is the condition of FES's current
13 balance sheet.

14 Q. And if FES had sufficient cash liquidity
15 and a balance sheet that was strong enough to support
16 additional debt, you wouldn't have your short-term
17 concerns regarding these plants, correct?

18 THE WITNESS: May I have that question
19 read back, please.

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. Yes, I would agree with that
23 hypothetical.

24 Q. Let's turn to page 8 of your rebuttal
25 testimony, lines 2 to 3, Mr. Lisowski.

1 A. Okay.

2 Q. FES has one shareholder, FirstEnergy
3 Corp., correct?

4 A. That's correct.

5 Q. How many shares of FES have been issued;
6 do you know?

7 A. I don't recall sitting here today, but
8 that is something publicly available on their balance
9 sheet.

10 Q. Thank you. Now, you don't know whether
11 FES has approached FirstEnergy Corp. regarding
12 securing financing or additional equity infusions to
13 address your concerns on capital expenditures for the
14 plants in the short-term, correct?

15 A. Well, I don't know if FES has actually
16 had any communication with FirstEnergy Corp.
17 requesting that. I don't see that as a potential
18 realistic thing that could happen, given the fact
19 that FE Corp. has already contributed \$2 billion in
20 cash equity infusions over the last few years.

21 MR. SETTINERI: And, your Honor, I would
22 move to strike everything after "I don't see that."
23 The question didn't ask for his opinion. I asked
24 simply whether he knew whether they had approached.

25 EXAMINER PRICE: We are going to grant

1 the motion to strike and remind the witness we would
2 like to get you up and down today, but that's going
3 to mean listening carefully to counsel's questions
4 and answering only counsel's questions.

5 I am sure Mr. Kutik will have lots of
6 questions for you on redirect if you would like to
7 add some additional information.

8 THE WITNESS: Yes, your Honor.

9 Q. (By Mr. Settineri) And at page 8, line 11
10 of your rebuttal testimony, I believe you state,
11 "Each business must stand on its own," correct?

12 A. Yes.

13 Q. Okay. And when you say "each business,"
14 are you referring to each affiliate within the
15 FirstEnergy Corp. umbrella?

16 A. Well, I may not understand what you mean
17 by each corporate affiliate under the FirstEnergy
18 umbrella. I would say this. The competitive
19 business is comprised primarily of FES and Allegheny
20 Energy Supply. Those are the two primary legal
21 entities underneath that. So that business is how FE
22 Corp. kind of views the competitive generation
23 business.

24 That business needs to be able to stand
25 on its own; however, at the same time there is debt

1 that's outstanding for each. FES is its own legal
2 entity, as well as Allegheny Energy Supply is its own
3 legal entity. While the business needs to be able to
4 stand on its own, each legal entity needs to be able
5 to stand on its own. I hope that answered your
6 question.

7 Q. It does. I appreciate it. Now, is it
8 your testimony that the Commission should only
9 consider the financial wherewithal of FES when making
10 a decision on whether to approve rider RRS?

11 MR. KUTIK: Objection, beyond the scope
12 of his testimony.

13 EXAMINER PRICE: Mr. Settineri.

14 MR. SETTINERI: I think he's just talked
15 about how each business must stand on its own, so I
16 am certainly curious to see if he thinks the
17 Commission's decision should also be limited to the
18 business that he thinks should stand alone.

19 EXAMINER PRICE: You can go ahead and
20 answer the question.

21 THE WITNESS: May I have the question
22 read back, please.

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. I think the Commission should take into

1 consideration the current balance sheet situation of
2 FES and its ability to incur near-term losses and
3 negative cash flow and whether that has an impact of
4 whether these plants could get deactivated before the
5 end of its useful life, if that's what your question
6 is asking me.

7 Q. Well, I actually just asked you is it
8 your testimony that the Commission should only
9 consider FES's balance sheet in making a decision on
10 whether to approve rider RRS?

11 MR. KUTIK: Well, again, your Honor, I'll
12 object as beyond the scope. This witness is talking
13 about how to review the plants' financial viability,
14 which was what Dr. Kalt talked about. Mr. Lisowski
15 is talking about how properly -- how to properly view
16 financial viability, at least in the short-term, with
17 respect to those plants. This witness isn't
18 testifying about rider RRS in his rebuttal testimony
19 and with respect to what should be or shouldn't be
20 included in looking at rider RRS. That's beyond the
21 scope.

22 EXAMINER PRICE: If you can rephrase and
23 take out the RRS reference, it would be helpful.

24 MR. SETTINERI: Okay.

25 Q. (By Mr. Settineri) Mr. Lisowski, is it

1 your testimony that the Commission should only
2 consider FES's balance sheet versus the balance sheet
3 of any other FES affiliates in this proceeding?

4 A. I think the Commission should consider
5 FES's balance sheet, yes, because of the fact that
6 FES is the owner of these plants. I think as part of
7 that, the consideration should also be is how has FES
8 been able to manage over the last several years, in
9 this case, with equity infusions from FE Corp., and
10 given that's not going to be able to be continued, I
11 don't think there is a need to look at any other
12 potential legal entities under the FirstEnergy
13 umbrella of entities.

14 Q. So I guess, going back to my question,
15 though, again, it's your opinion then that the
16 Commission should only look at FES's balance sheet in
17 deciding this proceeding?

18 MR. KUTIK: Objection, asked and
19 answered.

20 EXAMINER PRICE: Overruled. He can
21 answer this more directly.

22 A. I think the Commission should look at
23 whatever it wants to look at. I don't think they
24 should be limited to anything.

25 Q. Okay. Thank you. On page 8, same page,

1 lines 9 through 10, you have a sentence, "It is not a
2 sustainable business model to expect a parent entity
3 to provide unlimited capital to its subsidiary." Do
4 you see that?

5 A. Yes.

6 Q. Now, the Sammis plant does not need
7 unlimited capital to survive in the short-term,
8 correct?

9 A. Yes, I would agree with that.

10 Q. Okay. And the same with Davis-Besse, it
11 does not need unlimited capital to survive in the
12 short-term, correct?

13 A. Yes, I would agree with that.

14 Q. And you would agree Mr. Ruberto's net
15 present value analysis in this proceeding accounted
16 for the capital expenditures necessary to keep the
17 plants operating, correct?

18 A. Yes.

19 Q. And in your forecast those capital
20 expenditures are accounted for in the net
21 plant-in-service line on your attachments to your
22 direct testimony, which is a component of the
23 seller's invested capital, correct?

24 MR. KUTIK: May I have the question read,
25 please.

1 EXAMINER PRICE: Please.

2 (Record read.)

3 A. I don't have a copy of my direct
4 testimony with all the attachments and workpapers.
5 If you have a copy of that, that would be helpful. I
6 want to make sure I answer your questions completely
7 accurately.

8 MR. SETTINERI: I would be glad to pass
9 out copies, although since he is only going to use it
10 to refresh his recollection, we'll save the paper.

11 EXAMINER PRICE: Do you want to see what
12 he handed the witness, Mr. Kutik?

13 MR. KUTIK: Sure. May I approach, your
14 Honor?

15 EXAMINER PRICE: You may.

16 MR. SETTINERI: Mr. Kutik, I have another
17 copy.

18 THE WITNESS: The workpapers aren't
19 included in here.

20 MR. KUTIK: Are you directing him to one
21 of his attachments?

22 Q. (By Mr. Settineri) Yes. Let's make this
23 quick. It's simply Attachment JJL-1, and this is
24 just for frame of reference only, Mr. Lisowski, not
25 for any number disclosure.

1 MR. KUTIK: And can you turn your
2 microphone back on, please.

3 MR. SETTINERI: Thank you.

4 Q. So you note Mr. Ruberto had accounted for
5 these capital expenditures in his testimony. I just
6 want to close the door here. In your forecast you
7 did account for the capital expenditures in the net
8 plant-in-service line, which would be line 31,
9 correct?

10 A. Yes, that's correct.

11 Q. Okay. That's all. Thank you,
12 Mr. Lisowski.

13 Now, the combination of your forecast and
14 Mr. Ruberto's net present value gives us \$770
15 million, correct?

16 A. Yes.

17 Q. And that \$770 million represents the
18 over- and underrecovery associated with rider RRS,
19 correct?

20 A. Yes.

21 Q. All right. And another way of saying it
22 is it would be the over- or underrecovery from the
23 netting of the wholesale -- the companies' sales of
24 the output from the plants deducted from the payments
25 that are owed to FES, correct?

1 A. Yes, that's correct.

2 Q. Okay. Now, isn't it true that
3 FirstEnergy Corp. could make an investment in FES in
4 exchange for that \$770 million in net present value?

5 A. No. I don't believe FirstEnergy Corp. is
6 in a position where it can give any additional equity
7 infusions to FES.

8 Q. So let's say Sammis -- well, I will save
9 that for the confidential session, just if I start
10 tossing out numbers.

11 MR. SETTINERI: Just one moment, please,
12 your Honors.

13 Q. Mr. Lisowski, you are appearing today on
14 behalf of the companies, correct?

15 A. Yes. I am not an attorney. My testimony
16 is on behalf of the companies; however, I have a role
17 at FES, so I am privy to certain aspects of the FES
18 business.

19 Q. And you are not appearing today on behalf
20 of FE Corp., correct?

21 MR. KUTIK: Well, I'll object.

22 EXAMINER PRICE: Grounds?

23 MR. KUTIK: Relevance.

24 EXAMINER PRICE: Mr. Settineri.

25 MR. SETTINERI: What's that?

1 EXAMINER PRICE: He objected based on the
2 grounds of relevance. Do you care to speak to that?

3 MR. SETTINERI: You know what? I will
4 withdraw the question. He said who he is appearing
5 on behalf of today.

6 Thank you, your Honors. At this time I
7 will reserve the remaining questions for
8 confidential.

9 EXAMINER PRICE: Thank you.

10 Ms. Willis?

11 MS. WILLIS: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Willis:

15 Q. Good afternoon, Mr. Lisowski.

16 A. Good afternoon.

17 Q. Now, Mr. Lisowski, as the assistant
18 controller of FirstEnergy Solutions, you report to
19 John Taylor, the vice president and controller, chief
20 accounting officer; is that correct? Is that right?

21 A. Yes.

22 Q. And Mr. Taylor works for James Pearson?

23 A. Yes.

24 Q. And Mr. Pearson is FE's chief financial
25 officer, correct?

1 MR. KUTIK: Well, I'll object because I
2 am not sure what FE means in this context. It is not
3 one of the terms we have been using.

4 MS. WILLIS: FE corporate.

5 EXAMINER PRICE: FirstEnergy Corp.

6 MR. HAYS: Your Honor, may I ask a --
7 your Honor, may I ask a favor?

8 David, my hearing is going, and when you
9 talk, it's so low, I can almost never hear what you
10 are saying. If --

11 MR. KUTIK: And that's a bad thing?

12 MS. WILLIS: I was going to say.

13 MR. HAYS: I am not saying it is.

14 MS. WILLIS: I envy you.

15 MR. HAYS: I end up looking red out of
16 this. My apologies. But if you could talk a tad
17 louder.

18 MR. KUTIK: I will try. Thank you.

19 EXAMINER PRICE: Ms. Willis, if you can
20 rephrase your last question using FirstEnergy
21 Corporation.

22 Q. (By Ms. Willis) Mr. Pearson is
23 FirstEnergy Corporation's chief financial officer,
24 correct?

25 A. Yes.

1 Q. And he is the individual who signs on to
2 or attests to the 10-K filings that are made by
3 FirstEnergy Corp.; is that right?

4 A. Could you just clarify for me what you
5 mean, "attests to the financials"?

6 Q. He signs the form 10-Ks as an accurate
7 and true representation of the financial information
8 contained therein.

9 A. Yes, I believe that's accurate.

10 Q. Now, you provide statements in your
11 testimony, and I am going to go to page 8, providing
12 information on cash equity infusions from FirstEnergy
13 Corporation to FirstEnergy Solutions in 2013 and
14 2014, right?

15 A. Yes.

16 Q. And you refer to the FirstEnergy
17 Solutions Form 10-K for the period ended December 31,
18 2014, correct?

19 A. Yes. When FES files its form 10-K with
20 the SEC it's part of FirstEnergy Corporate's filing
21 of the 10-K as well.

22 Q. And you also provide testimony as to the
23 FES cash and the cash equivalents on hand and refer
24 to that information coming from the Form 10-K,
25 correct?

1 A. Yes. It's a part of the financial
2 statements of the Annual Report that's filed in
3 conjunction with the Form 10-K.

4 Q. And when you are making that reference is
5 that to the 2014 10-K?

6 A. Yes.

7 Q. And you are familiar with the 2014 10-K
8 and rely upon it as part of your testimony, correct?

9 A. I struggle with the term, ma'am, that you
10 are saying I relied on it. This is information that
11 I have available to me as part of my normal
12 accounting and financial responsibilities of FES, so
13 this information was already in my hands. I had this
14 information already. I merely included the footnotes
15 so that way others that didn't have the information
16 could go and see where that information is coming in
17 the public domain.

18 Q. Did you actually work on the 2014 10-K?

19 A. If you can define for me, what do you
20 mean by "worked on it."

21 Q. I think your counsel when you were
22 being -- when there was a motion to strike said you
23 worked on the Form 10-K, and I just wondered what was
24 meant by that and whether that's correct.

25 A. Yes, I'm involved with the preparation of

1 certain aspects of it, reviewing certain aspects of
2 it, since it is a very important document that we
3 file.

4 MS. WILLIS: Your Honor, at this time I
5 would like to -- I have copies of and would like to
6 mark as OCC Exhibit No. 32 the FES 2014 10-K.

7 EXAMINER PRICE: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 EXAMINER PRICE: Ms. Willis, whose 10-K
10 is this?

11 MS. WILLIS: It would be FirstEnergy
12 Corporation and FirstEnergy Solutions' 10-K. It's a
13 consolidated 10-K.

14 EXAMINER PRICE: Thank you.

15 You are making Mr. Oliker's motion to
16 strike moot. You realize that, don't you?

17 MS. WILLIS: Yes. I did talk with
18 Mr. Oliker about that. I told him it's coming in.

19 Q. (By Ms. Willis) Mr. Lisowski, do you
20 recognize this document as the 2014 10-K?

21 A. It appears to be.

22 Q. At this point we are going to take a
23 break from the 10-K, but I promise you, we will have
24 questions on that for you.

25 Let's go to your testimony on page 4, and

1 specifically I want to focus on your testimony on
2 lines 17 through 18 where you claim that the
3 generation units can sustain losses and negative cash
4 flow in the short-term if the generation unit owner
5 has sufficient cash liquidity and a balance sheet
6 that is strong enough to support additional debt. Do
7 you see that?

8 A. Yes.

9 Q. And, now, here you would be speaking of
10 FirstEnergy Solutions as the generation unit owner;
11 is that correct?

12 A. Yes.

13 Q. And can you tell me or would you agree
14 that cash liquidity equates to the ability to meet
15 the short-term debt financial obligations with the
16 cash available? Is that a fair definition of cash
17 liquidity as you've used it in your testimony?

18 THE WITNESS: May I have that read back,
19 please.

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. Yes, I would agree with that.

23 Q. And would you agree with me there are
24 many factors that affect cash liquidity for a
25 generation unit owner?

1 A. Yes.

2 Q. Would you agree with me that one of the
3 factors that would affect cash liquidity is the
4 operating and maintenance expense of the units?

5 A. No. I don't -- I wouldn't agree with
6 that because it's not just the expenses itself that
7 would impact liquidity. You need to look to the
8 extent that the revenues can offset those expenses.
9 That, to me, would be a more relevant factor for cash
10 liquidity.

11 Q. Okay. And would you agree with me fuel
12 expenses affect cash liquidity?

13 A. No. Again, to me it would be to the
14 extent that the revenues earned that are coming in
15 that could offset those fuel costs would be the more
16 relevant factor in looking at the cash liquidity.

17 Q. But it would be a factor in looking at
18 the cash liquidity, the amount of fuel expenses that
19 a generation unit incurs?

20 MR. KUTIK: Objection. Asked and
21 answered.

22 EXAMINER PRICE: Overruled.

23 A. No. I wouldn't agree with that because
24 irregardless of what the fuel costs are, to me it's
25 more relevant to look at can the revenues offset that

1 fuel cost, so if the fuel costs were, say, a billion
2 dollars but your revenues were \$5 million, that's a
3 very positive. But if it was something much less
4 than that, it's to the extent the revenues can offset
5 it.

6 Q. Okay. Fair enough. Now, would you agree
7 with me, Mr. Lisowski, that cash flow is affected by
8 debt and the rates that are paid for debt?

9 A. I'm sorry, ma'am, I'm confused by your
10 question. Is the cash flow impacted by debt?

11 Q. By the amount of debt held by a
12 generation unit owner and the rates that are paid for
13 the debt.

14 A. I would agree that there are two aspects
15 of debt that would impact the cash flow, one being
16 any type of interest payments on that debt, as well
17 as if you had any types of maturities of debt as
18 well.

19 Q. Okay. Now, are you aware of any efforts
20 to refinance the maturing debt of FirstEnergy
21 Solutions?

22 A. Could you help me understand, when you
23 say "refinancing of FirstEnergy Solutions," what do
24 you mean by "refinancing"?

25 Q. What don't you understand about the term

1 "refinancing"?

2 A. To me there's many different ways of
3 refinancing. I want to make sure I understand how
4 you are using it here.

5 Q. Any way that you can think of in
6 refinancing. The question is, are you aware of any
7 efforts to refinance, no matter how you define
8 refinancing, with respect to the maturing debt of
9 FirstEnergy Solutions?

10 A. I'm not involved in the day-to-day debt
11 capital markets of refinancing of debt. I'm
12 generally aware that they will refinance debt
13 potentially if that is maturing or there are certain
14 aspects of the debt that requires a refinancing.

15 Q. Now, are you aware of whether or not the
16 short-term borrowings in the competitive energy
17 segment have decreased since March of 2015?

18 A. I don't know.

19 Q. If the short-term borrowings have
20 decreased for the competitive energy segment since
21 March of 2015, would that increase the available
22 liquidity for the competitive energy -- the energy
23 segment of FE Corporation?

24 A. Are you saying decreasing from March to
25 today or to some other period?

1 Q. Yes, March to today.

2 THE WITNESS: So with that clarification,
3 may I have the question read back, please.

4 EXAMINER PRICE: You may.

5 (Record read.)

6 Q. Let me perhaps try to rephrase that. If
7 short-term borrowings for the competitive energy
8 segment of FirstEnergy Corporation have decreased
9 since March of 2015, would that increase the
10 available liquidity for the competitive energy
11 segment?

12 A. Not necessarily. And the reason for that
13 is you would need to look at how much cash did FES
14 and the competitive business have as of March 31
15 versus today. Second, you need to look at what other
16 credit facilities and other liquidity, revolving
17 credit facilities, for example, that may be out
18 there. You need to look at all those other items as
19 well. So looking at just short-term borrowings
20 itself doesn't necessarily mean there's increase in
21 liquidity.

22 Q. Now, on page 8, lines 20 through 22, of
23 your testimony, you state that past losses and
24 negative cash flows have weakened the balance sheet
25 of FES to a point where it may no longer be able to

1 utilize remaining liquidity to keep these plants
2 running. Do you see that reference?

3 A. Yes. And in that sentence I define
4 liquidity as also including the debt and borrowing
5 capabilities.

6 Q. Now, is it your testimony that FES may no
7 longer be able to continue to borrow funds for the
8 next several years?

9 A. Yes. My testimony leaves out that FES
10 may not be able to borrow additional funds related to
11 keeping these plants operating in the short-term.

12 Q. And you are referring there solely to the
13 short-term borrowings; is that right?

14 A. Well, I believe it would be any type of
15 borrowings. It could take the form of a short-term
16 borrowing or a long-term borrowing.

17 Q. But the issue that you see is in the
18 short-term, correct, not in the long term?

19 MR. KUTIK: Well, I'll object. What do
20 we mean by "the issue"? Are we talking about the
21 issue with respect to be able to borrow, or are we
22 talking generally about the financial viability of
23 the plants?

24 MS. WILLIS: Financial viability of the
25 plants.

1 EXAMINER PRICE: If you can rephrase.
2 The objection is sustained. If you can rephrase your
3 question.

4 Q. (By Ms. Willis) You testified that the
5 concern you have with the financial need of the
6 plants is a short-term concern; is that correct, from
7 a balance-sheet perspective?

8 A. My concern is that the short-term cash
9 flows of these plants may not be sufficient where FES
10 has a strong enough balance sheet to incur additional
11 borrowings or utilizing its cash to keep those plants
12 operating in the short-term.

13 Q. Now, Mr. Lisowski, are you aware of the
14 instruments that FES currently utilizes for
15 short-term borrowings?

16 A. Not in great detail, no.

17 Q. Do you understand that there is a
18 short-term revolving credit arrangement?

19 A. I am generally aware that FES did have
20 one, yes.

21 Q. And when you say they did have one, is it
22 your understanding they do no longer have one?

23 A. I don't know, sitting here today, whether
24 they still have one.

25 Q. And are you aware of whether FES

1 currently utilizes what is known as a money pool
2 arrangement?

3 A. Yes, FES has an ability to borrow through
4 the money pool with other competitive affiliates.

5 Q. Can you identify any restrictions on the
6 instruments that FES currently utilizes for
7 short-term borrowings that are linked to FES's
8 balance sheet that would cause FES to no longer be
9 able to borrow funds for the next several years?

10 A. Yes. I refer to one on page 12 of my
11 rebuttal testimony --

12 Q. Yes.

13 A. -- where I talk about maintaining certain
14 financial covenants and certain debt-to-equity
15 ratios.

16 Q. Can you be more specific? What financial
17 debt covenants are you referring to there that is
18 linked to FES's balance sheet that would cause FES to
19 no longer be able to borrow funds?

20 EXAMINER PRICE: You should only answer
21 that question now if you can do it without breaching
22 some sort of confidentiality; otherwise, you might
23 have to do this --

24 MR. KUTIK: You read my mind, your Honor.

25 MS. WILLIS: Your Honor, it's information

1 contained in the 10-K. We can go there.

2 EXAMINER PRICE: I have no idea. I am
3 just raising the possibility. The 10-K is fine.

4 A. Okay. Ma'am, since you just said it is
5 in the 10-K, can you refer me to the page?

6 Q. Let's go for a moment to your testimony.
7 You just directed me to your testimony and said that
8 there are restrictions in the financial covenants
9 that are linked to your balance sheet that would
10 cause you to no longer be able to borrow funds, and I
11 want to understand your testimony before we get to
12 the 10-K, what that is based on.

13 MR. KUTIK: May I have the question read,
14 please?

15 EXAMINER PRICE: You may.

16 (Record read.)

17 A. So I'm generally aware there is a
18 debt-to-equity or a debt-to-capitalization ratio
19 related to the revolver that FES has that we were
20 talking about earlier.

21 Q. Is there any other restrictions that you
22 can identify that FES currently utilizes for
23 short-term borrowings that are linked to FES's
24 balance sheet and would cause FES to no longer be
25 able to borrow funds for the next several years?

1 A. There may be others. I just -- the one
2 that I can think of that came to mind as part of my
3 rebuttal related to the revolver.

4 Q. Now, with respect to the revolving
5 credit, can you tell me what that -- if you know what
6 your understanding of the revolving credit
7 debt-to-capitalization ratio is that restricts you
8 from borrowing funds?

9 A. Generally aware that there is a ratio as
10 defined within the specific revolver that's based on
11 maintaining a debt-to-capitalization ratio below a
12 certain amount.

13 Q. And can you identify what that
14 debt-to-capitalization ratio is?

15 A. I don't recall.

16 Q. Mr. Lisowski, let's turn to OCC Exhibit
17 No. 32, the 2014 10-K, if you will. And I am going
18 to try to specifically direct you to the discussion
19 in the 10-K of the revolving credit arrangement.
20 Perhaps you could help me find that portion.

21 Oh, no, I found it. I found it. Let's
22 go to page -- in my copy it's 143 of 432. I think--
23 in the original document it was page 72.

24 A. Okay. I am at page 143.

25 Q. And do you see the discussion of the

1 "Revolving Credit Facilities" there?

2 A. Yes.

3 Q. And is that the revolving credit facility
4 we have been discussing?

5 A. Yes.

6 Q. Okay. And is it your understanding that
7 there is a -- that the debt-to-capitalization ratio
8 with respect to FirstEnergy Solution is that
9 65 percent debt to capitalization is required? Or am
10 I reversing that?

11 A. That's correct, it's 65 percent as
12 defined under each of the specific facilities, as it
13 says on the top of page 144.

14 Q. So, in other words, under the short-term
15 revolving credit facility, the debt to -- or the
16 restriction would be that FirstEnergy Solutions would
17 have to maintain no more than 65 percent debt; is
18 that the way to read that?

19 A. That's correct, as defined under the
20 specific covenant for the revolver.

21 Q. And can you tell me, as you sit here
22 today, how much debt FES maintains at this point, as
23 of today as we sit here today?

24 A. Are you asking me debt as defined under
25 this ratio?

1 Q. Yeah. We can try it that way, if you
2 understand how debt is defined under that ratio.

3 A. So I don't know what the specific
4 calculation is under this ratio and how they define
5 debt and capitalization, so I don't know in the
6 context of the revolver credit facility.

7 Q. Okay. How about generally, what is the
8 debt-to-capital-equity ratio that FES maintains?

9 A. I don't know. I don't have that
10 calculation with me today.

11 Q. Would you agree -- would you understand
12 it to be in the neighborhood of 35 percent long-term
13 debt with 65 percent equity?

14 A. I don't know. I don't have that
15 calculation in front of me.

16 Q. If I may have a --

17 MS. WILLIS: If I may have one moment,
18 your Honor?

19 EXAMINER PRICE: You may.

20 Q. Mr. Lisowski, let's go to the FES balance
21 sheet that's contained on page 116 of the 10-K. Do
22 you have that reference?

23 A. Page 116.

24 Q. Yes. And that would be -- I think that's
25 the original page 116, I believe.

1 EXAMINER PRICE: Can you give the page
2 references for the actual exhibit so if this goes to
3 the Supreme Court, the magistrate will know where to
4 look?

5 MR. KUTIK: I think we are looking at
6 page 222 and 223 of 432.

7 MS. WILLIS: Thank you.

8 MR. KUTIK: Is that right, Ms. Willis?

9 MS. WILLIS: Yes, that's correct.

10 A. Okay.

11 Q. Now if we wanted to determine the
12 capitalization ratio, could we do that calculation
13 based on the information contained on page 116 where
14 it lists capitalization?

15 MR. KUTIK: You mean 223?

16 MS. WILLIS: Yes, 223 of 422.

17 THE WITNESS: I am sorry. Can I have
18 that question either rephrased or reread?

19 MS. WILLIS: Reread it, please.

20 (Record read.)

21 A. No, I don't believe you can.

22 Q. Can we look at the total capitalization
23 of 8.193 billion, correct? Do you see that?

24 A. I see that number.

25 Q. And then we would look at the

1 stockholders's equity of 5.585 billion?

2 A. I see that number.

3 Q. And then we can look at the long-term
4 debt of 2.608 billion?

5 A. I see the long-term debt number.

6 Q. So the common-equity ratio, if you do the
7 calculation, would be 68 percent, correct?

8 A. No.

9 Q. And can you tell me why that's not
10 correct?

11 A. There's a couple of reasons. One is you
12 are ignoring the currently payable debt of over
13 \$506 million that you can see on the bottom of page
14 222. You are also ignoring affiliated company
15 short-term borrowings, which are borrowings from the
16 intercompany money pool, of \$35 million. In
17 addition, you are excluding all off-balance sheet
18 arrangements that you would include as part of your
19 commitments, guarantees, and contingencies, which is
20 a note at the bottom of -- I guess it's mid page of
21 223. That would also be considered a debt-like
22 instrument, even though it's off balance sheet, and
23 in general financial metric analysis, you would
24 include those things as well.

25 Q. So if you included those things that you

1 indicated, what would be the debt-to-capitalization
2 ratio, Mr. Lisowski?

3 A. It would be worse than the number you
4 stated, but I don't have that analysis with me.

5 Q. So as we sit here today, you don't know
6 what the debt-to-capitalization ratio for FirstEnergy
7 Solutions is which could provide a restriction on the
8 short-term revolving instrument borrowing?

9 A. No. I do not have that number with me
10 here today.

11 Q. Do you know, Mr. Lisowski, the current
12 available liquidity for FirstEnergy Solutions?

13 MR. KUTIK: May I have the question read,
14 please.

15 EXAMINER PRICE: You may.

16 (Record read.)

17 Q. And let me strike that and start over.

18 Do you know the current available
19 liquidity for the competitive energy segment of
20 FirstEnergy Corporation?

21 THE WITNESS: I'm sorry, may I have that
22 question read back.

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. I don't know what the current liquidity

1 is as of today.

2 Q. Okay. And by "current liquidity" do you
3 understand that I am talking about the short-term
4 revolving credit that's available to FES and AE
5 Supply that is available until March 31, 2019?

6 A. Sitting here today, I don't know how much
7 of that revolving credit facility is available as
8 liquidity today.

9 MS. WILLIS: Your Honor, may I approach?

10 EXAMINER PRICE: You may.

11 Q. Mr. Lisowski, I am going to ask you to
12 turn to page 75 of the FirstEnergy Fact Book
13 published July 30, 2015, and ask you to look at the
14 bottom slide, which is entitled "Financial Liquidity"
15 and ask you to look at, in particular, the
16 competitive energy segment, available liquidity, and
17 ask if that refreshes your recollection as to the
18 available liquidity for the competitive energy
19 segment of FirstEnergy Corporation?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: No foundation.

23 EXAMINER PRICE: Well, she is just asking
24 if it refreshes his recollection, so I think we'll
25 cross the foundation threshold if she attempts to

1 introduce --

2 MR. KUTIK: Fair enough, your Honor.

3 A. Ma'am, what page are you on?

4 Q. I'm sorry, that would you be page 75,
5 although the slide indicates it's slide No. 144.

6 A. Yes, I agree that number there says 1.2
7 billion.

8 Q. And do you have any reason to question
9 that \$1.2 billion is the available liquidity for the
10 competitive energy segment of FirstEnergy Corporation
11 as of March -- as of June 30, 2015?

12 EXAMINER PRICE: Let's hold on a second.
13 You agree that the number was 1.2 billion. Does that
14 refresh your recollection as to that is the proper
15 number, or are you just agreeing the slide says 1.2
16 billion?

17 THE WITNESS: I agree that the slide says
18 1.2 billion.

19 EXAMINER PRICE: Okay.

20 Q. (By Ms. Willis) You have no opinion on
21 whether or not that is the correct number; is that
22 right, Mr. Lisowski?

23 A. I haven't prepared slide 144. I would
24 expect it to be correct. I just have never talked to
25 anybody about slide 144 and what the underlying

1 assumptions are and details and how that number was
2 derived and if there is any restrictions associated
3 with that liquidity. So I can agree that the number
4 says that. I just don't know all the kind of details
5 behind how that number comes about and what the basis
6 for it is.

7 Q. Would you have any reason to question the
8 basis of that number?

9 MR. KUTIK: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: He says he is not familiar
12 with that slide. It's the same answer.

13 EXAMINER PRICE: I thought you were
14 simply giving us an exhibit to refresh his
15 recollection, and he doesn't appear to have an
16 independent recollection of what the number is.

17 MS. WILLIS: Fair enough, your Honor.

18 Q. (By Ms. Willis) Going back a moment, we
19 said that the current available liquidity would be
20 the short-term revolving credit that's available to
21 the competitive energy segment, correct?

22 A. Yes.

23 Q. Okay. And can we go back to the Form
24 10-K, page 143 of 432?

25 MR. KUTIK: I'm sorry, what page?

1 MS. WILLIS: 143 of 432.

2 Q. And here -- we were here earlier
3 discussing revolving credit. Do you recall that?

4 A. Yes.

5 Q. And is it your understanding that the
6 revolving credit discussed here is a \$1.5 billion
7 short-term credit that's available to FirstEnergy
8 supply?

9 A. I'm sorry. I think you misspoke there,
10 FirstEnergy supply?

11 Q. FirstEnergy Solutions, I'm sorry. Thank
12 you.

13 A. Yes. The facility is available to FES
14 and AE Supply.

15 Q. And the current available liquidity would
16 be reduced by that borrowings that were under the
17 revolving credit instrument; is that correct?

18 A. I think I understand your question. If
19 there were borrowings under that facility, you would
20 reduce the amount of available liquidity going
21 forward to be able to borrow under that facility
22 going forward.

23 Q. So the answer is that the current --
24 current available liquidity would reflect the \$1.5
25 billion short-term credit available reduced by the

1 borrowings under that instrument; is that correct?

2 A. Yes, generally speaking, and
3 notwithstanding if there were some other restrictions
4 against being able to borrow under it.

5 Q. And do you have an understanding of the
6 borrowings that are -- that FirstEnergy Solutions has
7 made under the short-term revolving credit between it
8 and FirstEnergy Corporation?

9 A. I'm sorry, I am not understanding your
10 question. FirstEnergy Corporation borrowing against
11 FES?

12 Q. I'm sorry. Perhaps I am misleading you,
13 and I do not intend to do that. We have been talking
14 about the revolving credit facility, correct, in the
15 past minute or so?

16 A. Yes.

17 Q. Is it your understanding under the
18 revolving credit facility that FirstEnergy Solutions
19 borrows from FirstEnergy Corporation under that
20 instrument?

21 A. I'm sorry. I am very confused by your
22 question. Are you asking does FES borrow from FE
23 Corp. under this revolver?

24 Q. Yes. Isn't that what this -- what the
25 10-K -- the revolving credit facility that's

1 described in 10-K, isn't that what occurs?

2 A. No.

3 Q. And then can you explain to me what the
4 revolving -- can you explain to me what revolving
5 credit facility that's described in the Form 10-K at
6 page 143 provides?

7 A. This facility -- this facility is
8 borrowings from financial institutions, third
9 parties. These are -- this is not a credit facility
10 for FES to borrow from FE Corp. It's to borrow with
11 third parties.

12 Q. Thank you. Thank you. So to draw a
13 conclusion to this, you would consider the funds that
14 are available to FirstEnergy Solutions under the
15 revolving credit agreement to equal the available
16 liquidity to FirstEnergy Solutions?

17 THE WITNESS: Can I have that read back,
18 please?

19 EXAMINER PRICE: You may.

20 (Record read.)

21 A. Yes. I would agree that anything that
22 was not drawn on with the revolver would be available
23 liquidity. However, you need to take into
24 consideration if there is any other restrictions, for
25 example, where is that debt-to-equity ratio. I just

1 don't have that with me today. But if that ratio is
2 already maxed out, so to speak, that liquidity may
3 not be there.

4 Q. And as we sit here today --

5 MR. KUTIK: Excuse me.

6 Had you finished your answer?

7 THE WITNESS: Yes.

8 Q. I'm sorry. I did not mean to cut you
9 off. As we sit here today, you don't know what that
10 ratio is, and you don't know whether there is
11 restrictions that would be -- would prohibit any
12 further borrowing under the revolving credit --

13 MR. KUTIK: Objection.

14 Q. -- agreement?

15 MR. KUTIK: Objection, asked and
16 answered. She even prefaced her question that way.

17 EXAMINER PRICE: Let's have the question
18 back, please.

19 (Record read.)

20 EXAMINER PRICE: I will allow the
21 question.

22 A. Borrowings on the revolver could be
23 restricted because of the debt-to-covenant ratio --
24 excuse me, the debt-to-capitalization ratio. That,
25 as we talked about earlier, is specifically laid out

1 in the 10-K, so that is one restriction I am aware of
2 on being able to use that revolver. With that said,
3 I don't know, sitting here today, what that
4 debt-to-capitalization ratio defined in that covenant
5 is today.

6 Q. And who would know that information,
7 Mr. Lisowski?

8 A. I would expect our treasury department
9 that monitors our debt -- our financial debt
10 covenants on a routine basis.

11 Q. Are you aware of any other provisions in
12 the short-term revolving credit instrument that
13 restricts the ability to borrow or accelerate the
14 payments of outstanding events -- I'm sorry, or
15 accelerate the payment of outstanding advances under
16 the agreement?

17 MR. KUTIK: May I have the question read?

18 EXAMINER PRICE: You may.

19 (Record read.)

20 A. I don't know.

21 Q. Are you aware of any limitations that are
22 based on -- let me strike that.

23 You testified earlier, I believe, that
24 you are familiar with the FirstEnergy money pools,
25 correct?

1 A. In very general terms, yes.

2 Q. Do you understand that the FirstEnergy
3 money pool is an arrangement whereby FirstEnergy
4 Corporation's unregulated subsidiaries can borrow
5 money from each other and the holding company to meet
6 their short-term working capital needs?

7 A. Yes, I would agree with that.

8 Q. And is it your understanding that the
9 loans under the FirstEnergy pools are repaid within a
10 year of borrowing with interest accrued at
11 1.35 percent per year?

12 MR. KUTIK: May I have the question read?

13 EXAMINER PRICE: You may.

14 (Record read.)

15 A. Ma'am, I believe you are reading directly
16 from the 10-K, and I believe it sounds like that
17 interest rate and appears that interest rate was the
18 rate as of 20 -- for 2014. And any of those kind of
19 borrowings would go on the balance sheet of FES as
20 debt.

21 MS. WILLIS: Your Honor, I would move to
22 strike "and any of those borrowings," that sentence,
23 that clause. I believe he answered my question.

24 EXAMINER PRICE: You asked him for his
25 understanding. He gave you his understanding.

1 Motion to strike is denied.

2 Q. Now, you also discussed with
3 Mr. Settineri parental guarantees. Do you recall
4 that discussion?

5 A. Yes.

6 Q. And are you aware or familiar with the
7 parental guarantees from FirstEnergy Corporate to the
8 competitive operations of \$203 million as of June 30,
9 2015?

10 A. No.

11 EXAMINER PRICE: Could I have the
12 question and answer back, please.

13 (Record read.)

14 EXAMINER PRICE: Thank you.

15 Q. Are you aware of or familiar with any
16 parental guarantees from FirstEnergy Corporate to the
17 competitive operations that are in place at this
18 time?

19 A. The most that I am aware of in my role
20 being responsible for accounting, financial matters
21 is the direction that FES can no longer assume that
22 it can continue to receive parental guarantees on,
23 quite frankly, any types of contracts that FES may
24 want to go into or to invest in going forward.

25 Q. Did you finish your answer?

1 A. Yes.

2 MS. WILLIS: I move to strike, your
3 Honor.

4 MR. KUTIK: Your Honor, that's directly
5 responsive to the question.

6 EXAMINER PRICE: Can I have the question
7 and answer back, please.

8 (Record read.)

9 EXAMINER PRICE: Again, "aware of" or
10 "familiar" are very broad terms, and he took
11 advantage of the door you opened. Denied.

12 Q. (By Ms. Willis) Let's go to page 4 of
13 your testimony, lines 15 through 18. You state that
14 "Dr. Kalt ignores the current financial status of FES
15 and its Plants, which limits FES's ability to absorb
16 any additional negative cash flow or earnings
17 losses." Do you see that?

18 A. Yes.

19 Q. And you go on to state that "Generation
20 units can sustain losses and negative cash flow in
21 the short-term if the generation unit owner has
22 sufficient cash liquidity and a balance sheet that is
23 strong enough to support additional debt." Do you
24 see that?

25 A. Yes.

1 Q. Let's go to the OCC Exhibit No. 32, and I
2 want you to go specifically to page 226. Can you go
3 there, please, for me?

4 A. Okay.

5 Q. Now, this document shows that FirstEnergy
6 Solutions Corporation's consolidated statement of
7 cash flows, correct?

8 A. No, I don't believe that's correct. It's
9 FirstEnergy Solutions Corporate -- you said
10 FirstEnergy Corp.? Maybe I misheard heard you.

11 Q. Let me ask again. I am looking at page
12 225 of 432, OCC Exhibit No. 32, and that page shows
13 FirstEnergy Solutions Corp.'s consolidated
14 statements of cash flows, correct?

15 A. That's correct. And it moves on to page
16 226 as well.

17 Q. Yes. Now, I want to direct your
18 attention to the statement of cash flows beginning on
19 page 118. Can you turn to the -- it's actually page
20 226, the following page. Do you have that?

21 A. Okay. I am on page 226 of 432.

22 Q. And let's specifically look at the cash
23 flows from investing activities. Do you see that?

24 A. Yes.

25 Q. Can we agree that for each year 2012

1 through 2014 that FES net cash provided from
2 operating activities as positive?

3 A. That is not on page 226.

4 Q. Oh, I'm sorry, it would be on 225 at the
5 very bottom. Sorry. Let me ask my question again.
6 Can we agree that for each year 2012 through 2014
7 that FES net cash provided from operating activities
8 is positive?

9 A. Yes.

10 Q. And in 2014 the net cash provided from
11 operating activities was 571 million.

12 A. Yes.

13 Q. And can we agree that the net cash from
14 operating activities is positive, even after
15 eliminating the changes in the current assets and
16 liabilities, correct?

17 A. Ma'am, I may not be understanding your
18 question, but net cash provided from operating
19 activities takes into consideration already changes
20 in working capital.

21 Q. Okay. Thank you. Now, let's take a look
22 at page 223 of that document. And this 223 shows the
23 FirstEnergy Solutions Corporate's consolidated
24 balance sheets, correct?

25 A. Correct.

1 Q. And I want to refer you, in particular,
2 to the capitalization that's found on page 223,
3 correct? Are you there?

4 A. Yes, I'm there.

5 Q. And as of December 31, 2014, the total
6 capitalization was 8.193 billion, correct?

7 A. Yes, you stated that number correctly.

8 Q. Now, if we go back to your page 11 of 12
9 of your testimony, page 11 and 12, you talk about the
10 importance of the debt-to-equity ratio, correct, the
11 leverage ratios as you call it? Do you see that
12 starting on page -- line 22 of page 11 carrying over
13 to page 12?

14 A. Yes, I'm there.

15 Q. And you state there that "Leverage
16 ratios, such as comparing the amount of Debt to
17 Equity are important financial metrics that are used
18 to determine the financial strength of a company."
19 Do you see that?

20 A. Yes.

21 Q. Now, let's go to page 5 of your
22 testimony. You testify on lines 8 through 11 that
23 "Past financing requirements to fund negative cash
24 flow and earnings losses have a continued negative
25 effect on a company's balance sheet because those

1 losses decrease a company's ability to fund future
2 cash flow obligations." Do you see that?

3 A. Yes.

4 Q. Can you agree with me that the balance
5 sheet figures that we just went through with respect
6 to OCC Exhibit No. 32 would include the cumulative
7 effect of negative cash -- cash flow and earnings
8 losses through the end of 2014?

9 THE WITNESS: May I have that question
10 read back, please?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 A. Yes.

14 Q. Now, on page 5 on lines 13 through 15,
15 you testified that "Based on a weak balance sheet
16 caused by historical losses and near-term forecasts
17 of the plants, FES has identified these Plants to be
18 financially at-risk of closure prior to their useful
19 lives." Do you see that?

20 A. Yes.

21 Q. Do you consider a balance sheet with
22 approximately 68 percent common-equity ratio to be a
23 weak balance sheet?

24 A. Can you define for me in your example
25 68 percent? Are you saying that's FES's

1 capitalization?

2 Q. Let's start with just -- we will take any
3 company. A competitive -- let's say a competitive
4 energy services company. Would you consider a
5 balance sheet with this 68 percent common-equity
6 ratio to be a weak balance sheet for a competitive
7 generation owner?

8 A. Okay. So, ma'am, in your hypothetical
9 that ratio is including all debt instruments,
10 including any type of off-balance sheet arrangements
11 or any off-balance sheet parental guarantees or other
12 commitments, contingencies, or guarantees that are
13 not reflected on the balance sheet?

14 Q. Yes. We can agree to that.

15 A. Using that hypothetical that we just
16 discussed, that is not including all debt, including
17 off-balance sheet arrangements, I would agree with
18 that.

19 Q. Okay. Now, let's go to page 8 of your
20 testimony, lines 2 through 6. You indicate that --
21 and I believe you had some questions for
22 Mr. Settineri about this. You indicate that FES
23 received cash equity infusions from FirstEnergy Corp.
24 of 1.5 billion in 2013 and 500 million in 2014,
25 correct?

1 A. Correct.

2 Q. And those equity infusions provided
3 additional financial support to FES to improve the
4 strength of its balance sheet, correct?

5 A. That's correct.

6 Q. And you also state that despite this cash
7 infusion, FES had only \$2 million in cash and cash
8 equivalent on hand as of December 31, 2014, correct?

9 A. That's correct.

10 Q. Let's go back to the OCC Exhibit No. 32,
11 and specifically let's turn to page 225. And let's
12 focus on for a moment -- let me strike that.

13 This is the information, is it not, that
14 you reference in your footnotes in your testimony,
15 correct?

16 A. Page 225, no.

17 Q. Can you tell me specifically what page in
18 the 10-K that you reference in your footnote?

19 A. Sure. I am referring to pages 222 of 432
20 and page 223 of 432.

21 Q. The consolidated balance sheets?

22 A. That's correct.

23 Q. As opposed to the consolidated statement
24 of cash flows.

25 A. That's correct.

1 Q. Well, let's take for a moment the cash
2 flows from the financing activities. Do you have
3 that page, 225 in front of you?

4 A. I do. And on your prior question you're
5 right, we do include the cash on hand at that period
6 on page 226, so just to clarify that.

7 Q. Thank you. Now, focusing on the cash
8 flows from the financing activities, we can see on
9 page 225 the equity infusions from FirstEnergy Corp.
10 of 1.5 billion in 2013 and 500 million in 2014,
11 correct?

12 A. Yes, that's correct.

13 Q. And now when we look at 2013, there was
14 also a pay-down of 1.202 billion of long-term debt,
15 correct?

16 A. Yes. While there was some long-term debt
17 that was redeemed, about 1.2 billion, there was also
18 431 million short-term borrowings.

19 Q. Now, under the redemptions and the
20 repayment of the long-term debt of 1.202 -- let me
21 strike that.

22 Would you agree with, Mr. Lisowski, that
23 the equity infusion of 1.5 billion from FirstEnergy
24 Corp. was mainly to retire the long-term debt and not
25 to fund negative operating cash flows in that year?

1 A. No, I would disagree with that. I think
2 paying -- for a couple of reasons. One is the --
3 while the debt that was redeemed was a significant
4 use of those proceeds, you can see in 2013 the cash
5 provided by operations was only \$78 million.

6 If you move on to the second page, page
7 226, you can see just looking at the fact that
8 property additions, which is our capital
9 expenditures, totaled \$717 million of cash out.
10 There was also nuclear fuel purchases of
11 \$250 million, so in that year cash flow was negative
12 when you take into consideration investments needed
13 to keep the plants operating through the property
14 additions and the nuclear fuel.

15 Q. And in your response you said that the
16 equity -- in your response you said that the equity
17 infusion, a significant portion of that, went to
18 retire long-term debt; is that correct?

19 A. Yes, that's correct.

20 Q. Now, in 2014 there was a repayment of the
21 long-term debt of 816 million; is that correct?

22 A. Yes. And there was new long-term debt
23 financing of \$878 million.

24 Q. Yes. That was offset by the new issuance
25 of long-term debt, correct?

1 A. That's correct. And you can see there
2 was about 300 million of short-term redemptions as
3 well.

4 Q. So there was a repayment of 301 million
5 of short-term borrowings, correct?

6 A. That's correct.

7 Q. Now, you had a statement in your
8 testimony with regard to the fact that there was only
9 \$2 million in cash and cash equivalent on hand as of
10 December 31, 2014. Do you recall that testimony for
11 FES?

12 A. Yes.

13 Q. Okay. Let's refer to page 223 of the OCC
14 Exhibit No. 32. Do you have that in front of you?

15 A. I do.

16 Q. And if we looked under the current
17 assets, we would see cash and cash equivalent of \$2
18 million, correct, for 2014?

19 MR. KUTIK: I'm sorry. What page are you
20 on?

21 MS. WILLIS: 222.

22 Q. And that's what you reported in your
23 testimony.

24 A. Yes, that's correct.

25 Q. And we would see for as of the end of

1 December 31, 2013, that there was a balance of cash
2 and cash equivalent on hand of \$2 million, correct?

3 A. Yes, that's correct.

4 Q. Okay. Is it your understanding,
5 Mr. Lisowski, that the balance of cash and cash on
6 hand as of December 31, 2012, was \$3 million?

7 A. I don't know.

8 Q. And you would not know what the balance
9 of cash and cash equivalent on hand was for
10 FirstEnergy Solutions shown on the consolidated
11 balance sheets for any other years prior to 2013; is
12 that correct?

13 A. Sitting here, no, I don't know what those
14 are. You can get that from publicly available
15 sources, though.

16 Q. Now, on page 9 on lines 13 through 15,
17 you testified that "Dr. Kalt has failed to examine
18 the statement of the FES balance sheet to determine
19 whether FES would be able to incur more debt to
20 sustain negative cash flows." Do you see that
21 reference?

22 A. Yes.

23 Q. Did you, Mr. Lisowski, conduct an
24 analysis of the FES balance sheet to determine
25 whether FES would be able to incur more debt?

1 A. Yes. There was a couple of things that I
2 looked at as part of that analysis. One is I looked
3 at what FES has said publicly about its ability to
4 take on additional debt. I also looked at what
5 actions FES has taken over the last couple of years
6 in regards to deactivating plants that have had
7 near-term losses and risks associated with them, as
8 well as plants that it was able to sell and get some
9 value out of from a reasonable basis, so I would
10 think all of those items are part of my analysis.

11 Q. And did you present your analysis in
12 testimony to show that the balance -- or did you
13 present your analysis in your testimony of the FES
14 balance sheets to show whether or not FES would be
15 able to incur more debt?

16 A. Yes. So one aspect of the analysis I
17 just talked about was around the plant deactivations
18 and the sales and the actions that FES had to take,
19 and that starts on the bottom of page 5 and goes on
20 through page 7 in discussing each one of those plants
21 as well as the plants that were sold.

22 Q. So your testimony is that your analysis
23 of the state of FES's balance sheet is shown through
24 your testimony on pages 5 through 7.

25 A. I think that's one area. I think another

1 is the fact that FES has had to receive \$2 billion in
2 equity infusions as discussed starting on top of page
3 8.

4 Q. Is there anything else that you see in
5 your testimony that addresses the state of FES's
6 balance sheet that would show whether or not FES
7 would be able to incur more debt to sustain negative
8 cash flows?

9 A. Yes. I think also on the bottom of page
10 8 starting on line 14 where I talk and show the
11 Davis-Besse and Sammis and the OVEC entitlement and
12 the fact that that's cost FES a significant amount of
13 cash is another aspect that's part of that analysis.

14 Q. Let's move to page 10 to 12 of your
15 testimony where you talk about asset impairments.

16 MR. KUTIK: Your Honor, before we go to
17 the next point, he has been at this for two hours.
18 It might be a good time for a break.

19 EXAMINER PRICE: Let's go ahead and take
20 a 10-minute break. We will reconvene at 5:10. We
21 are off the record.

22 (Recess taken.)

23 EXAMINER PRICE: Let's go back on the
24 record.

25 Ms. Willis, please proceed.

1 MS. WILLIS: Thank you, your Honor.

2 Q. (By Ms. Willis) Mr. Lisowski, I am going
3 to refer your testimony -- or I am going to refer you
4 to pages 10 through 12 of your testimony where you
5 address the recording of asset impairments, and
6 specifically on page 10 at lines 19 through 21, you
7 state that "If an impairment test is required, the
8 first step is to compare the future undiscounted net
9 cash flows generated to the asset's current book
10 value." Do you see that?

11 A. Yes.

12 Q. And then you state that "Despite what
13 Dr. Kalt believes... the accounting rules may not
14 allow for a write-down, regardless of what the
15 company may want to do." Do you see that reference?
16 And that would be page 11, lines 8 through 11.

17 A. Yes.

18 Q. So you would agree with me FES cannot
19 simply record an asset write-down on its own
20 initiative if the expected future undiscounted net
21 cash flows generated are greater than the current
22 book value of the assets, correct?

23 A. Yes, that's correct.

24 Q. And so Dr. Kalt has failed to recognize
25 the positive cash flows for the plant, correct?

1 A. I'm sorry, ma'am, I don't understand when
2 you are saying Dr. Kalt in regards to an impairment
3 is ignoring positive cash flows.

4 Q. Well, you're criticizing Dr. Kalt because
5 he has not -- he does not recognize that you -- that
6 you have to follow accounting rules and the
7 accounting rules require or only has specific
8 instances where an impairment can be recorded,
9 correct?

10 A. Yes. I think that is an issue that
11 Dr. Kalt doesn't recognize, is that you have to
12 follow accounting rules in regards to an impairment,
13 as well as the fact that how it could be reasonable
14 to want to take an impairment.

15 Q. Okay. And so part of your criticism of
16 Dr. Kalt is that these plants may not qualify for an
17 impairment, correct?

18 A. You used the word "qualify." Let me say
19 it maybe this way, I think it answers your question,
20 is that irrespective of what a company may want to do
21 to take impairment, they may not be able to because
22 it doesn't meet the very specific accounting rules
23 that are required.

24 Q. Thank you. And the accounting rule in
25 this instance would be that you cannot have an

1 impairment where the book -- where the expected
2 future undiscounted net cash flows generated are
3 greater than the current book value -- or, are less
4 than the current book value, correct?

5 THE WITNESS: I'm sorry. May I have that
6 read back, please?

7 EXAMINER PRICE: You may.

8 (Record read.)

9 MR. KUTIK: Objection, asked and
10 answered.

11 MS. WILLIS: I can rephrase that.

12 EXAMINER PRICE: In a manner that's going
13 to address Mr. Kutik's objection?

14 MS. WILLIS: Actually, I can ask -- I can
15 go on to a different question, actually.

16 EXAMINER PRICE: I was just asking, I was
17 wondering when you wanted a ruling on the asked and
18 answer.

19 MS. WILLIS: Sure, I'll take a ruling.
20 If it's going to go my way, I would like to have it
21 for my record.

22 EXAMINER PRICE: I was hoping if you
23 rephrased I wouldn't have to make a ruling. We will
24 sustain the objection.

25 MR. KUTIK: There goes your record.

1 MS. WILLIS: My record is not that good
2 anyways, I'm afraid.

3 Q. (By Ms. Willis) Okay. Let's go for a
4 moment -- so that I understand, in order to take an
5 impairment for the plants, you would have to find
6 that the expected future undiscounted net cash flows
7 generated are less than the current book value of the
8 assets, correct?

9 A. Yes.

10 Q. And you have not taken an impairment
11 write-down for either Davis-Besse or Sammis.

12 A. I have gotten this question before, and
13 we have always deferred that question and answer to
14 the confidential section, I remember in my first
15 deposition on this question, so I would prefer that
16 since we kept that question and answer then in
17 confidential, we keep it in confidential here as
18 well.

19 Q. Well, isn't the taking of an impairment
20 an activity that would be recorded on the FERC Form 1
21 as well as the 10-K and annual reports and financial
22 statements?

23 A. Well, FES does not file a FERC Form 1.

24 Q. Correct. What about the 10-K, wouldn't
25 you record on your 10-K form, the consolidated, which

1 shows FirstEnergy Solutions' information, wouldn't
2 you show impairments that had been taken with respect
3 to generation units?

4 MR. KUTIK: Just so I can understand, the
5 question simply is the fact of an impairment or not
6 an impairment, not the reasons for that.

7 MS. WILLIS: I'm not asking about the
8 reasons for it.

9 MR. KUTIK: I just want to make sure we
10 are all clear as to what the question is.

11 EXAMINER PRICE: Okay. Let's break -- is
12 that your question, that it is just the fact it has
13 to show on the 10-K?

14 MS. WILLIS: Yes.

15 EXAMINER PRICE: Go ahead and answer the
16 question.

17 A. Yes, I would expect if it was a
18 significant impairment, it would require disclosure
19 in the Form 10-K.

20 Q. And as far as you are aware, there have
21 been no impairments disclosed for Sammis or
22 Davis-Besse to date?

23 A. By FES, that's correct.

24 Q. Now, if we go back to the OCC Exhibit No.
25 32 and we turn to page 116 -- I'm sorry. That would

1 be page 223 of 432. Let's go actually to page 222.

2 If we looked at the "Property, Plant and Equipment"

3 line -- do you see that?

4 A. Yes.

5 Q. If we wanted to -- or, if an -- let me
6 strike that. You've testified that there's been no
7 impairments taken for Sammis and Davis-Besse,
8 correct?

9 MR. KUTIK: Objection. Mischaracterizes
10 his testimony. It says no impairments have been
11 disclosed.

12 Q. Okay. You've testified no impairments
13 have been disclosed by FirstEnergy, correct?

14 A. I believe I said that no impairments have
15 been disclosed by FES.

16 Q. Okay. Do you know whether any
17 impairments have been taken by FES with respect to
18 Sammis and Davis-Besse?

19 A. None that I can recall.

20 Q. Now, if an impairment was taken for
21 Sammis or Davis-Besse, would you agree with me that
22 the future undiscounted net cash flow generated by
23 the plants as of the end of 2014 would have to have
24 been less than \$9.4 billion, given the plant balances
25 shown on FirstEnergy Solutions Corporation's

1 consolidated balance sheets?

2 A. No, that's not correct.

3 Q. And why is that not correct?

4 A. The 9.4 billion in net property, plant,
5 and equipment on page 222 of 432 is the book value of
6 all of FES's assets, not just the Sammis and
7 Davis-Besse plants.

8 Q. So it would include all plants, correct?

9 A. When you say "it," I would say -- I don't
10 know what you mean by "it." I would say that the 9
11 billion, 398 million is the book value on the balance
12 sheet as of December 31, 2014, for all of FES's --

13 Q. So it would include --

14 MR. KUTIK: Had you finished your answer,
15 sir?

16 THE WITNESS: No, I had not.

17 Q. I'm sorry. Go ahead.

18 A. It would be the 9 billion, 398 million
19 would be the net book value of all of FES's property,
20 plant, and equipment as of December 31st of 2014.

21 Q. And do you know the net book value of
22 Sammis and Davis-Besse as of December 31, 2014?

23 A. That is something that is in my direct
24 testimony, confidential.

25 Q. So if we went to your direct testimony in

1 the confidential, we would be able to see the net
2 book value for Sammis and Davis-Besse and -- let me
3 strike that. I am going to withdraw that question.

4 Now, Mr. Lisowski, you indicated that you
5 were familiar with the Form 10-K, correct, the 2014
6 10-K that we have been discussing?

7 A. Certain aspects of it, yes.

8 Q. And are you familiar with the section in
9 the 10-K which discusses the capital resources in
10 liquidity?

11 MR. KUTIK: Would you want to show him or
12 point him to that, please?

13 Q. Sure. Page 142.

14 A. I'm familiar with some aspects but not
15 all aspects of this section.

16 Q. Are you familiar with the first sentence
17 in that paragraph that says, "FirstEnergy expects its
18 existing sources of liquidity to remain sufficient to
19 meet its anticipated obligations and those of its
20 subsidiaries"?

21 THE WITNESS: May I have that question
22 read back, please?

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. Yes.

1 Q. And, Mr. Lisowski, moving on down the
2 page, are you familiar with the second-to-last
3 paragraph which reads, "The Utilities and
4 FirstEnergy's competitive generation operations
5 expect to fund their capital expenditures over the
6 next several years through the cash from operations,
7 debt, and, depending upon the operating company,
8 equity contributions from FE"?

9 A. My familiarity with that paragraph is
10 that the competitive generation is not expecting
11 because it cannot go out and get additional debt or
12 additional equity infusions, and that's why these two
13 plants, Sammis and Davis-Besse, are at risk, because
14 the competitive generation operations expects to be
15 able to fund the capital expenditures, but that
16 doesn't necessarily preclude the deactivations of
17 these plants in the next couple of years.

18 MS. WILLIS: I am going to move to
19 strike, your Honor. I don't think that's responsive.
20 I asked him if he is familiar. It's a "yes" or "no"
21 question.

22 EXAMINER PRICE: Well, I don't really
23 think it's a "yes" or "no" question, but I am going
24 to sustain your objection as nonresponsive. I will
25 sustain your motion.

1 MS. WILLIS: Thank you.

2 That's all the questions I have, your
3 Honor.

4 Thank you, Mr. Lisowski.

5 EXAMINER PRICE: You didn't want an
6 answer to your question? You asked a question. I
7 struck his answer. You are not going to try again?

8 MS. WILLIS: Mr. Lisowski --

9 EXAMINER PRICE: You don't have to. I
10 was just asking. I wanted to make sure you weren't.

11 MS. WILLIS: Can I have the question
12 reread?

13 EXAMINER PRICE: You may.

14 Can we have his last question back,
15 please.

16 (Record read.)

17 A. Now I want to make sure I answer your
18 question. What do you mean, am I familiar with?

19 Q. Did you -- were you aware that that
20 statement is contained within the 10-K?

21 A. Yes.

22 MS. WILLIS: That's all the questions I
23 have, your Honor.

24 Thank you, Mr. Lisowski.

25 EXAMINER PRICE: Thank you.

1 Mr. Oliker, before we move on to you, we
2 will retake up consideration of your motion to strike
3 the footnotes on page 8, and at this time we will
4 deny your motion to strike given the extensive
5 discussion we've had over OCC 32.

6 MR. OLIKER: Thank you, your Honor.

7 MS. WILLIS: Thank you.

8 EXAMINER PRICE: Please proceed.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Oliker:

12 Q. Good after, Mr. Lisowski.

13 A. Good afternoon.

14 Q. First, I would like to turn to your
15 testimony where you discuss an economic impairment.
16 And, first, would you agree that the analysis of
17 whether an impairment exists is dependent on a
18 forecast of future cash flows?

19 A. Sir, you said economic impairment. I
20 assume you meant an accounting impairment?

21 Q. Yes, thank you. Whatever terminology you
22 are familiar with, that's fine. As it's referred to
23 in your testimony, Mr. Lisowski.

24 A. Yes, a forecast would be used as part of
25 the test of if you had an accounting impairment.

1 Q. So there is assumptions for costs of the
2 units, like fuel costs, correct?

3 A. Yes.

4 Q. As well as assumptions regarding market
5 prices?

6 A. There would be an assumption of the
7 energy and capacity revenues which would have an
8 underlying market-price assumption.

9 Q. Okay. So if you would change any of
10 those assumptions, you may come up with a different
11 result, right?

12 A. If you could help me understand your
13 hypothetical, why would you be changing the
14 assumptions when you are doing an impairment
15 analysis?

16 Q. Okay. Just assume for a second that you
17 used Mr. Rose's projections for your impairment
18 analysis. Just assume that for a second. And then
19 assume you no longer believe Mr. Rose is credible and
20 you used a different set of assumptions with lower
21 market prices and higher fuel costs. Would you agree
22 that if you were to, under this hypothetical, it's
23 possible you could record an impairment for any one
24 of the units?

25 A. I struggle with your hypothetical, and

1 here's why. When you do the impairment test, you use
2 the best information that you have at that time. If
3 in a future period of time down the road you have to
4 do another asset impairment, you would use the
5 assumptions that you felt were best at that point in
6 time, so that's why I struggle with your
7 hypothetical.

8 Q. Understanding that you are struggling
9 with my hypothetical, would you agree it's possible
10 that you could take an impairment if you use
11 different assumptions in your forecast?

12 A. Again, the accounting guidance requires
13 you to use your assumptions that you have at that
14 point. If you end up in a different position down
15 the road and you have to do another asset impairment
16 test, you would use the assumptions that you have at
17 that time. You wouldn't sit there today saying,
18 well, I run my test, but I am going to run some other
19 numbers as well. You use your best information that
20 you have at that time.

21 EXAMINER PRICE: So the answer to the
22 question is "no"; is that right? You can't just redo
23 a new set of projections?

24 THE WITNESS: That's correct, yes, I
25 would agree with that.

1 Q. (By Mr. Oliker) Okay. And I guess my
2 point is, assuming the EPA's release of the final
3 carbon rule required another impairment analysis --
4 well, first of all, would you agree the EPA's release
5 of its carbon rule did, in fact, require another run
6 of your impairment analysis?

7 A. Are you asking me for my direct testimony
8 forecast, or are you asking me as my position at FES
9 for our internal projections? I am not understanding
10 your question, sir.

11 Q. Do you understand that there are certain
12 events that can require an impairment analysis, such
13 as a new environmental rule?

14 A. I think it depends if your original
15 assumptions had already assumed that environmental
16 rule was going to come out, you likely would not have
17 to rerun your asset impairment test.

18 Q. Okay. Can you explain the accounting
19 entries that occur if there is a negotiation over a
20 power plant that results in a sale below the net book
21 value?

22 A. Sir, I want to make sure I understand
23 your question. So you are asking me what the
24 accounting entries would be if you sold a power
25 plant?

1 Q. At a lower than net book value.

2 A. Okay. So you would -- I assume that in
3 this hypothetical you receive all cash?

4 Q. Yes.

5 A. So if you sold a power plant at something
6 below your net book value, you would debit the cash
7 proceeds you received, you would credit your net book
8 value asset that's on your books, and your -- you
9 would also debit then the difference between those as
10 an expense, as a loss on the sale of an asset,
11 ignoring all other tax entries that are related to
12 that transaction.

13 Q. And the purchase of the power plant then
14 records on their balance sheet the fair market value,
15 correct, as opposed to the net book value as prior to
16 the transfer?

17 A. It depends. Here is why it depends. And
18 I understand you are not an accountant. Power plants
19 are typically looked at as a business, not
20 necessarily completely just as a fixed asset. So you
21 may end up in a situation where you end up
22 recognizing there's very -- many different things
23 that could happen, and that's why it depends on the
24 sale. But you could end up putting goodwill on your
25 books associated with that power plant. You could

1 end up having to recognize a loss by the buyer on
2 that purchase. They could end up recognizing a gain.
3 There is a lot of different things that could happen,
4 so it really depends on the accounting policies and
5 the viewpoint that buyer has on that purchase.

6 Q. Let me ask you a hypothetical. Let's
7 assume that the net book value of Sammis is 1.8
8 billion dollars, just because that's what FES has
9 publicly represented the cost to scrub the plant was.
10 Now, assume you negotiate with IGS. We buy the plant
11 for 1.5 billion.

12 EXAMINER PRICE: Are you making an offer?

13 MR. OLIKER: Not yet, your Honor.

14 Q. In that hypothetical where there is a
15 \$300 million difference between the net book value
16 and the purchase price, would you agree it's unlikely
17 there will be any goodwill recorded on IGS's books?

18 A. I don't know. I think it would depend on
19 how IGS looked at the purchase of that plant. Based
20 on their fair evaluation of buying that asset, which
21 would be treated as an acquisition of a business, it
22 could end up recognizing some type of goodwill and
23 could be recognizing that plant at the net book
24 value. My point is it depends on the accounting and
25 viewpoint of that purchaser.

1 Q. So is it your testimony that IGS in this
2 hypothetical could record an amount higher than 1.5
3 billion on its books?

4 A. I can speak for the accounting on FES's
5 side. If I was an accountant for IGS I may have a
6 different viewpoint of it. So I'm just merely
7 stating that the accounting rules are very specific,
8 and there is a lot of things that can be considered
9 on what -- how IGS under that hypothetical could be
10 in your example.

11 Q. Could you turn to OCC Exhibit 32, please.
12 And specifically could you go to page 340.

13 A. Okay.

14 Q. And this is the 2012, December 31,
15 "Condensed Consolidating Statements of Income and
16 Comprehensive Income" of FirstEnergy Solutions. Can
17 you identify what is the line that says "Purchased
18 Power from Nonaffiliates"?

19 A. That would be any purchases of power that
20 FES made in order to serve its load obligations.

21 Q. Okay. And the fuel -- and this is under
22 the consolidated that I am looking at that represents
23 the fuel expenditures of all of the competitive
24 business segments?

25 A. No. On this page this would be the fuel

1 expense recognized by FES and its subsidiaries.

2 Q. I thought we said the same thing. What
3 was -- what was it you didn't like about my question?

4 A. You asked me I believe if this is the
5 competitive business.

6 Q. Yes.

7 A. Fuel, this is just FES's, so this would
8 exclude Allegheny Energy Supply.

9 Q. Okay. Thank you. Now, I understand.
10 And if we go to just two pages before that, which is
11 page 338 of 432, am I correct the purchased power
12 from nonaffiliates rises about \$500 million?

13 A. Sir, just to make sure we are looking at
14 the same thing. So we are comparing the
15 approximately \$1.9 billion on page 340 of 432 to the
16 \$2.3 billion, roughly, on page 338?

17 Q. Yes.

18 A. I would agree with that.

19 Q. And the fuel is remaining about very
20 close the same, right?

21 MR. KUTIK: Well, at this point, your
22 Honor, I'll object as beyond the scope.

23 EXAMINER PRICE: Mr. Oliker?

24 MR. OLIKER: Your Honor, we are just
25 leading up to 2014, which is in his testimony, and

1 these are the foundational questions to make the key
2 point to why this all matters.

3 EXAMINER PRICE: I'll allow it.

4 THE WITNESS: I'm sorry, may I have the
5 question read back, please.

6 (Record read.)

7 A. It's about 25 million, if that's what you
8 would say is the same.

9 Q. Okay. And then if we go two pages before
10 that, which is the year that you are discussing in
11 your testimony, December 31, 2014, the purchased
12 power for nonaffiliates has gone up another
13 \$400 million; is that correct?

14 A. Sir, if you can just help me understand,
15 you are saying in my testimony, my rebuttal
16 testimony. Where in my rebuttal testimony do I talk
17 about 2014 earnings or purchased power of fuel?

18 Q. I am talking about the time frame,
19 Mr. Lisowski, where you discuss cash on hand and
20 other things in your testimony. That's not the
21 important part of the question. Maybe I will restate
22 it.

23 MR. KUTIK: I will object, your Honor,
24 again, as beyond the scope.

25 EXAMINER PRICE: Well, we have gone this

1 far down the path, we'll let him prove up the point
2 he wants to make.

3 MR. OLIKER: Thank you, your Honor.

4 EXAMINER PRICE: You can answer the
5 question.

6 THE WITNESS: May I have the question
7 read back, please.

8 (Record read.)

9 A. Yes.

10 Q. And isn't it true that that number is
11 largely influenced by losses incurred by FirstEnergy
12 Solutions to cover unhedged positions during the
13 polar vortex?

14 A. I don't know.

15 Q. And if we turn to page 192, which is page
16 349 of 432 --

17 MR. KUTIK: I'm sorry, what page?

18 MR. OLIKER: 349 of 432.

19 A. Okay.

20 Q. And I believe it's the sixth paragraph
21 down where it says, "In 2014, the CES segment began
22 to reduce its exposure to weather-sensitive loads,
23 including maintaining competitive generation in
24 excess of committed sales, eliminating load
25 obligations that do not adequately cover risk

1 premiums," and then talking about leaving certain
2 market channels. That's discussing FirstEnergy
3 Solutions, your reliance on purchased power from
4 nonaffiliates, correct?

5 A. It doesn't say anything about purchased
6 power in that section that you just read.

7 Q. Okay. So what about the part where it
8 says "including maintaining competitive generation in
9 excess of committed sales"? What does that mean to
10 you?

11 A. To me it means that for CES's committed
12 sales obligations, it's strategy is to use and
13 maintain competitive generation to serve that load.

14 Q. Right. And is this paragraph not
15 indicating that FirstEnergy Solutions' prior practice
16 was to commit to sales above its competitive
17 generation?

18 A. No, I wouldn't agree with that. Your --
19 your question assumes or it makes it sound like FES
20 was not hedging its load obligations. If -- in the
21 event FES was selling something that it did not have
22 its own generation, it would at that time have made
23 the sale, go out and buy purchased power in advance
24 of that sale that was going to occur.

25 So what you are saying, it sounds like

1 FES has load obligations but with no hedge associated
2 with it, and that's not how FES operates.

3 Q. Okay. What about when it says, "In 2014,
4 the CES segment began to reduce its exposure to
5 weather-sensitive loads, what's a weather-sensitive
6 load?

7 A. You are asking for my definition?

8 Q. Yes.

9 A. I would define it as load that would vary
10 significantly based on weather. So if it was -- if
11 it's very hot, we see significantly higher usage from
12 that customer. If it's very cold, similar, versus if
13 weather is very mild, they use less.

14 Q. And residential customers are very
15 weather-sensitive, correct?

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: This whole line, your Honor,
19 is beyond the scope, I think it has been proven at
20 this point.

21 EXAMINER PRICE: Mr. Oliker, care to
22 explain the relevancy of this to his rebuttal
23 testimony? I have given you a lot of leeway.

24 MR. OLIKER: He is talking about
25 profitability of FES in 2014, and maybe it has

1 nothing to do with the power plants. It has more to
2 do with the way they manage their portfolio.

3 MR. KUTIK: Your Honor, talking about
4 profitability of the plants.

5 EXAMINER PRICE: I agree.

6 MR. OLIKER: But he is talking about
7 their whole FES profitability.

8 EXAMINER PRICE: He is talking about
9 FES's financial condition.

10 MR. OLIKER: Yes, which may not be a
11 result of their power plant management.

12 EXAMINER PRICE: It doesn't mean the
13 plants are not at risk. The -- I am not seeing the
14 connection to his testimony. Even if what you're
15 speculating about were to be true, the balance sheet
16 is the balance sheet.

17 MR. OLIKER: Okay.

18 MR. PETRICOFF: Your Honor, if I could,
19 in Mr. Oliker's defense.

20 EXAMINER PRICE: Are you trying to help
21 Mr. Oliker?

22 MR. KUTIK: Just a second. Mr. Settineri
23 is the lawyer for this witness.

24 EXAMINER PRICE: Got you there.

25 MR. SETTINERI: I thought we looked

1 enough alike.

2 EXAMINER PRICE: Mr. Settineri, would you
3 care to rise in defense of Mr. Oliker?

4 I didn't think so.

5 Mr. Oliker, do you have any additional
6 questions?

7 MR. OLIKER: I do.

8 Q. (By Mr. Oliker) FirstEnergy's solutions
9 balance sheet was also impacted in 2014 by balancing
10 and reserve charges that FirstEnergy Solutions
11 incurred, correct?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Beyond the scope.

15 EXAMINER PRICE: Where are you going with
16 this, Mr. Oliker?

17 MR. OLIKER: I am showing it's a one-time
18 thing, your Honor.

19 MS. BOJKO: Your Honor, may I be heard?

20 EXAMINER PRICE: Sure.

21 MS. BOJKO: Mr. Lisowski continuously
22 talks about the -- what now?

23 EXAMINER PRICE: Don't worry.

24 MR. KUTIK: I apologize.

25 EXAMINER PRICE: Work on it tonight.

1 THE WITNESS: Thank you, your Honor.

2 MS. BOJKO: Well, that was pretty rude.

3 EXAMINER PRICE: Don't say that to the
4 witness. Come on.

5 MS. BOJKO: I apologize for
6 mispronouncing your name. I think the point is that
7 he is talking throughout his testimony about the
8 FirstEnergy Solutions and the need of FirstEnergy
9 Solutions and what has occurred about many decisions.

10 I mean, we moved to strike all the
11 testimony about the various decisions that
12 FirstEnergy Solutions has made from 2010 to 2014 --
13 '15. And I think that was denied. And this goes to
14 the other decisions that FirstEnergy Solutions has
15 made or not made, and it goes to the total portfolio
16 of FirstEnergy Solutions which they talked about on
17 line 7.

18 He said "Despite these efforts," meaning
19 all of these business decisions to improve
20 FirstEnergy's balance sheet -- "FirstEnergy Solutions
21 still required additional financial support." So
22 this goes to the very issue that is contained in the
23 testimony before us today. If you are going to talk
24 about some of the decisions FirstEnergy Solutions
25 made, it's appropriate to talk about other decisions

1 that FirstEnergy Solutions has made to put them in
2 the position where they are requesting that the
3 Commission assist them with improving their balance
4 sheet.

5 EXAMINER PRICE: Mr. Kutik?

6 MR. KUTIK: Well, as you aptly pointed
7 out, your Honor, the point is the balance sheet is
8 what it is. The points about the what has happened
9 is the companies have done a number of things, like
10 shedding assets and getting capital infusions and
11 whatever good or bad other decisions they have made,
12 they are still at a point where FES and FE Corp.
13 cannot support further losses and risks in the
14 short-term for these plants. That's the point.

15 EXAMINER PRICE: Mr. Oliker, you can have
16 the final word.

17 MR. OLIKER: I think, as Ms. Bojko
18 implicitly suggested, it does go to all of the
19 decisions made by FES and whether or not there has
20 been potential mismanagement. I think that's
21 something the Commission should consider.

22 EXAMINER PRICE: You see, I think in your
23 quest to advocate for this point, you are just
24 demonstrating the incredibly broad nature of what you
25 are saying because what you are saying now is that

1 potentially in response to what he has said, you can
2 litigate any mismanagement allegation you have for
3 FirstEnergy Solutions since it was created, and I
4 think that's -- no, that's exactly what you said.
5 All the decisions was what Ms. Bojko said.

6 MR. OLIKER: I am referring to 2014, your
7 Honor. I'm sorry.

8 EXAMINER PRICE: I understand but you are
9 talking about 2014 and she is talking about capital
10 injections that occurred before the polar vortex so I
11 don't think that they did a capital injection in
12 anticipation of the polar vortex in 2013. Are you
13 that clever?

14 THE WITNESS: No.

15 MR. OLIKER: That's not my argument.

16 MS. BOJKO: I'm sorry, that wasn't my
17 argument either.

18 EXAMINER PRICE: That's what I understood
19 your argument to be. We are going to sustain the
20 objection.

21 MR. OLIKER: One minute, please.

22 EXAMINER PRICE: While he is thinking I
23 have a question that has been bothering me. The
24 lines on there say purchase power from affiliates, we
25 were discussing -- from nonaffiliates we were

1 discussing earlier.

2 THE WITNESS: Yes.

3 EXAMINER PRICE: Would that include
4 potentially capacity purchased from another utility
5 that was an FRR entity in order to serve retail load
6 in that utility service territory?

7 MR. KUTIK: That was for affiliates.

8 EXAMINER PRICE: For nonaffiliate, for
9 nonaffiliate.

10 THE WITNESS: Let me answer it this
11 way -- I think I understand your question. Let me
12 answer it this way, it would include any capacity
13 expense that FES incurred to serve its retail load.
14 That would be a part of the purchase power for
15 nonaffiliates, and it would show up on FES.

16 MR. OLIKER: Do you have any more
17 questions, your Honor?

18 EXAMINER PRICE: Pardon me?

19 MR. OLIKER: Do you have any more
20 questions?

21 EXAMINER PRICE: No, I don't.

22 Q. (By Mr. Oliker) And just on the
23 definitions, I don't want you to get into the
24 numbers, but your definition of cash flow, does that
25 merely compare revenues to costs but not including

1 depreciation or accretion expense?

2 A. Are you asking my definition as outlined
3 in Exhibits JJL-4 through 7?

4 Q. Yes.

5 A. So I won't get into the numbers, but line
6 No. 25 would be the revenues less cost and capital
7 expenditures excluding depreciation and accretion.

8 MR. OLIKER: Okay. That's all the
9 questions I have, your Honor. Thank you.

10 EXAMINER PRICE: Thank you.

11 Okay. At this time we've got one piece
12 of unfinished business before we adjourn for
13 the evening.

14 Mr. Lisowski, you are excused until
15 tomorrow following Witness Evans' testimony.

16 We had extensive discussions regarding
17 FirstEnergy's motion for protective order in order to
18 preserve parties' rights to appeal or raise this
19 issue with the Commission on brief. We will
20 memorialize our decision that FirstEnergy's motion
21 for protective order will be granted and that the
22 intervening parties did not show good cause to waive
23 the rule prohibiting further discovery once the
24 hearing was conducted.

25 MR. SOULES: Your Honor --

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EXAMINER PRICE: Yes.

MR. SOULES: May we be permitted to put on the record opposing the motion for protective order?

EXAMINER PRICE: Let's go off the record real fast.

(Discussion off the record.)

EXAMINER PRICE: Let's go back on the record. We had a brief discussion regarding the ability of the parties to challenge this ruling on their brief or interlocutory appeal.

At this time we will adjourn for the evening. Thank you all. Commence tomorrow again at 9 o'clock.

Off the record.

(Thereupon, the hearing was adjourned at 5:53 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, October 26, 2010, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-69589)

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Summary: Transcript In the Matter of the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company hearing held on 10/26/15 - Volume XXXII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.